John Evans

A

LETTER

TO A LAWYER FROM A FARMER,

ON

THE RIGHT OF PRIVATE CORPORATIONS TO TAKE PEOPLE'S LAND AGAINST THEIR WILL, WITHOUT PAYING FOR IT.

PORTSMOUTH:
1841.

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Sir:

In the winter of January: 1841: the rabble of this district were said by some to be stirred up by certain factious, interloping vagabonds, to find fault with, and even dare to ask the courts of New-Hampshire to take cognizance of some proceedings of a railway corporation. It was argued, if I be not mistaken, by the railway in substance: "That the instant their act of incorporation receives the assent of the governor, they are justified under it in taking possession by force of any body's lands or whatever else: leaving their owner to get paid, for being unexpectedly kicked out of his own door, after wading through some process or other which, if he can go up to Concord and find somebody that ought to be there at home, the same can tell him what it is if he know himself: that is, if the corporation do not get its exchequer emptied by somebody else before it come to his turn:" The railway held further: "That it was not material by any means that the act of incorporation should be absolutely enacted already: as kicking a man out of doors, blowing up his house and running locomotives where it stood, would be constructive notice of a prior conveyance: and be held by a court of equity to be violent presumption of notice to him that the General Court ought to register an act for them to do it by, some future day: which was just as good as a private act of the General Court specially pleaded (Do not throw the letter down here, my learned friend, because you think I am trying to be ironical! wait and hear the opinions of our superior court!)": The vagabonds contended on the other side: "That the right of the General Court itself to take one man's estate and give it to another without paying him for it they had made search for and could not find it; they wanted to know where it was: that as far as they could make out, the General Court could not warn a man off his own ground without saying they would; and if they meant to pay for it, it could give them very little trouble to say so: they talked something among themselves about their taking off estates by private acts in such hot afternoons in haytime, and vesting them in other people without letting them ever know they were going to: they said they had heard something read out of a book about a Trial by Jury: The doctrine that a corporation exists before it is chartered, they wholly protested against; and said was as new in New-Hampshire as in Westminster Hall." The High Court of Chancery held the railway's doctrine was right and the other's wrong.

The question I wish you yourself to determine for me, my learned friend, so that I could understand it, is: "whether, by its acts of incorporation, such as they were, this corporation had a right to take land: et cetera: against its owner's will, without paying for it some damages: whether these damages could be ascertained by any way but a Trial by Jury: and this carried on in the way clearly set forth in the act?

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Whether with an ending-place fixed by law, it had a right to do it, against the owner's will. in a direction to any other, and professing an intention not to run their railway to the one fixed by law? whether if they had no such right, the owner had a right to ask a court of equity to stop them? That is; whether the estate he had in his land before, and some injury he was going to sustain, being both let pass undisputed in the argument, our courts of equity had power to refuse an injunction? If the General Court can grant such a right of way for thirty years; it can for thirty thousand; thirty thousand feet deep: for all practical purposes, it is a conveyance of the man's whole estate to the railway: which should surely be taxed in all the towns and counties it runs through; or they, the last, are jockeyed by the General Court.

What has led me to write this letter is that a friend showed me a few days ago (I saw it a year ago or more, but suppose I did not read it through,) what he said was a copy of the deliberate opinion of our whole court of equity on this subject: I at first took it, of course, for a forgery got up to burlesque it; but he assured me it was genuine: a smile of sorrow for Carthage, of contempt for such ignorance in a whole court (it ends with saying: "In this result the several members of the court concur") succeeded the laughter: and to both, I am willing to own, one tear of the deepest pity.

Our High Court of Chancery asks itself: "what constitutes compensation?" and answers itself thus: "Must it in all cases consist of actual previous payment in some general tender established by law, or may it mean such general provision as in the opinion of the legislature may ensure in all cases a just and entire compensation? If the legislature have discretion of this kind as to the means of compensation, the present act furnishes a sufficient justification for the corporation, the same authority which gives the power to take land prescribes a means of compensation. It is subject to the delay attendant on the action of a committee, and of a Trial by Jury, and also to the contingency of non-payment: but if payment should not be ultimately made, the condition on which the land was entered upon might be considered as having failed, all concerned in the acts done upon the land would in such case become trespassers ab initio. With this construction of the acts the owner would either receive compensation for the land, or it would not pass from him, and for all intermediate acts, he would have the ordinary common law remedy against trespassers." The ignorance of the law shown in this, not only stares us in the face: but nothing but a miracle, one might think, could have concentrated so much of it in so few words: Every body knows that the legislature has no "discretion as to the means of compensation"; they have to a certain extent as to the way in which the owner is to get it: the whole court takes for granted that the General Court means the State to pay if the corporation do not ever, which every body knows is not true; for if they do not, the act is good for nothing at all: and after this; tells the world about "trespassers ab initio and common law remedies against trespassers" being "compensation"! Mr. Chief Justice Parker ushers such doctrine into the world:

we will see an elaborate opinion of his concerning this: by and by. I might as well address the letter to him at once; for, as far as I can learn, some of them might misunderstand the technical terms I shall be obliged to use. This in New Hampshire: that has boasted of Weare, West, Smith, Mason, Webster, Bells, Bartlett and so many more.

Is it essential to exhibit the nature of this question, to bring forward authorities to the effect that the State can give nobody else any thing she has not got herself; nor that she cannot devest one of her subjects of his estate for herself without giving him an equivalent: that consequently she cannot get it out of him and vest it in another without doing it either? No: it cannot be: not even with this unaccountable nonsense before me. But, when she devests him of his estate to give it to a private corporation, the people and their representatives hold one doctrine on the principles of the process and their courts another. We hold that the State means the corporation shall pay the debt themselves whether or no. Our courts hold that she assumes the debt for her own. They must hold it. So long as a contingency is left; there is no estate devested. We will explain this more at length by and by. If the corporation can and will discharge it; well and good: if not, the learned Courts, pretty much throughout the United States, whether they know it or no themselves, that is none of my business, have always held that the government means to be understood that the State shall. They consequently hold: "That the inexorable rules by which whatever any body else owes is determined in law,are released and suspended in favour of private corporations like this; when they seize the estate of one of the State's subjects: for it is the State contracts with him not the private corporation." This is the substance of the argument. It is of no use to say that such doctrine would be met by the General Court or the people with a shout of derision: that the courts assume what every legislature swears it never means, and nobody ever supposed they ever did. The General Court must take upon itself that the owner shall somehow be paid from the beginning or no estate is devested. Of his estate the humblest or the proudest subject may be devested, whenever a legislative power chooses to incorporate half a dozen adventurers, without getting a copper for it, without ever hearing he was going to lose it, by a fiction of law, which is an absolute imposture. Some people would say such a government was the most despotick in the world; if it be; it is Harlequin that fills the throne: with the crown on his head and the sceptre in his hand, and a court of law for his clown; to tell us what he says and see that it is done.

Without regarding this postulate that our courts must assume (they cannot help it) I will first examine with you, my learned friend, what this corporation is. This railway is a private corporation. The exploded fiction of the ancient common law, exploded in England itself as I will show you by and by, that it is instituted by our sovereign, here the people of New-Hampshire, for the public good, however generally or advantageously diffused the uses may be to which it may dedicate its franchise, give it no rights from it, except that of not dying, material to

the present inquiry, that the General Court could not give just as well to you or me. The uses for which it implored its franchise are not, however, of so very publick a nature; but it means to and can restrict them to whatever it pleases: and of course we know it was implored for the express and single purpose of private emolument. Had they owned all their land their railway goes over, with a right to make dangerous our highways; all that the publick can want them to do, they could have done before it was given, and had a right to do without a charter at all. The estate that they get from their charter in the land they take, becomes not the publick's: it is turned into their own private fortune as much as yours if you have one. Were the uses to which this railway is meant to be be put never so publick, it is still left initself a simple private corporation at common law. The General Court's choosing to accomplish purposes, in which the publick is interested (be they never so publick, it makes no difference; all corporations for the most narrowed capricious private purposes, expressed in their acts, a singing-school or a play-house, are equally by the same fiction of law instituted for the publick good,)through an aggregate corporation, instead of you or me, my learned friend, does not make it a publick corporation; the General Court can hand over the high power of the State to take your land for publick purposes against your will, to me as well as to them: to be used by me alone with the same boundless discretion, with my disinterestedness and my compassion, as it can hand it over to them to use at theirs. In all disputes concerning property, the same precedents,the same law, as far as we are concerned now, and the same established principles of law must govern the judgments with regard to what they have a right to do, or must be made to do, as with regard to what I then can or must do. The right the State has kept to herself in their charter does not make it less a private corporation: it is to buy it; not to take it without: and this right, our courts' nowadays hold, the State had without expressing it. The State, nor people of New-Hampshire, gets no property in the estate this railway takes under this franchise to take land against its owner's will or use it: which is just the same thing. The publick's very right to thoroughfare is practically at the pleasure of the corporation. And will the State really pay for this estate, if the railway will not or cannot? Why, they tell me the thing was tried: it was asked to pay up for another railway in full operation; but the corporation said it would not pay; for it could not; it was bankrupt. The General Court told the petitioner: "his losing his estate was no concern of theirs; they were not answerable, neither was the State answerable for the value of the estate they took by force from him and gave to a private corporation: it was no agent they had substituted for themselves; he must look to an action at common law: it was simply a quarrel about private property between two people, with which the State had no concern after the act was made!" Without they repeal its charter (and without a right to do that expressed in the act, they could not do that under a judgment we shall see: and, although the State assumes the right to itself to take the private property

of these corporations when it thinks proper, at its value, it gravely receives the right to take this one's, on paying it a sum doubling about every ten years at least from its beginning,) will this railway let the General Court take the very land it has devested and vested in them, and devest them of it and give it to another railway, without the last's paying them for such estate as they have in it? Or would they say that the General Court could not revoke its grant of the franchise: and an estate in a franchise conferred by a General Court is better than a fee-simple or an allodial estate the people of New-Hampshire have in their lands, and had before they made the constitution or set up the General Court at all? Is it? Would it let the General Court take it for the State's own use without compensation? And would it not be triumphantly sustained by our courts and those of the United States? Not for the loss of the worth of their franchise: not for that only: but their estate in this very land or on it? A private estate they are assumed at common law to have purchased: somebody had it before. The State's gift, then, of what it did not before own (for as we shall see, the State's own estate in its use is inseparable from the certainty of compensation) is better than fee-simple, is it? (Do we hold our lands of the government of the State, or of the State itself; that is, of each other? Unquestionably, we do of neither: they are strictly allodial: as much so as in Norway. They were always held so till this Massachusetts humbug about "eminent domain" came along. Unquestionably we hold them subject to be taken for her purposes by herself: but because we gave that right to her government; not because they ever belonged to her. She creates my right to compensation in the same instant she takes my estate: the two estates are inseparable from each other in idea.) It would be absurd to accumulate authorities that these are private corporations and all their property private property: for the less learned than yourself, my learned friend, there is at hand to be consulted a little book, fortunately published to us by "Timothy Farrar, Esquire, Counsellor at law," purporting to be a report of the case of the "Trustees of Dartmouth College against William Woodward": in which an investigation of the nature of corporations will be found, the ablest I know of, and accompanied with references to innumerable cases which each may consult according to his opportunities. Read the arguments of Mr. Jeremiah Mason and Mr. Daniel Webster and the admirable opinion of Mr. Justice Joseph Story! If indeed, in this celebrated case, the most important except one ever determined in our country, these great men so satisfactorily proved that a corporation, created wholly for publick purposes; and more vital ones to every body than riding to Newbury, the education of the people and the propagation of the gospel; expressedly by the crown for the benefit of his province of New-Hampshire; with no intention on the part of the men that gave it every thing it had of their own emolument; when who they were nobody knew, or if they did, they were dead and gone, and their heirs unknown; if it was held; against the statutes of our State and the judgments of its courts; and (I think most justly) determined: That such a corporation was a pri-

vate corporation and its property private property: we need not hesitate to pronounce upon the nature of this corporation, what it is at common law: got up solely to make money by and the property in whose franchise is sold from hand to hand by a stock-broker every day in the market. This corporation then is a private corporation: and as all its property of every sort they say themselves is private as soon as it is theirs: its property in its franchise, nor the property it gets through its franchise, nor any sort of a controversy it may carry on, solely on its own account, concerning this property under its franchise, are of a publick nature, more than yours or mine. A contrary doctrine would in the words of Mr. Justice Story be "utterly irreconcileable with the decisions, the whole current of them, since the time of Lord Coke, and undermine the most solid foundations of the common law;" as this railway set out to blow up Andrew Huzzy's house against his will, without paying him a copper, under a charter not to go within some miles of it at the time that it did so. In the well-contested case of Charles River Bridge against Warren Bridge in another State, it was argued with great force by the present Chief Justice of that State and the present Secretary of State of the United States; these justly celebrated men held: "That not only all the money they had got out of the publick in fifty years before was private property, which by an article of their bill of rights, to say nothing of the constitution of the United States, their General Court could give no authority to a private corporation to take without a simultaneous (their opinions and mine are the same) provision for compensation: but that the General Court had no power to determine the nature of the compensation, the amount of it; nor could the damages be ascertained but by agreement or the single way of a Trial by Jury (the same article is in their bill of rights that is in ours):" They not only held this; but they also held: "That all the money they ever meant to get out of us, twenty years after, was then private property already: that their right to prospective toll was private property too, which their General Court, nor the general government, nor another private corporation, nor any body else, could take from them again; could diminish or impair by giving the publick another highway, without simultaneous provision for compensation, to be ascertained only by agreement or a Trial by Jury." The law, they said, was clear: they must have this given them by the same act which carried off their estate, or they had still a right to make every body that wanted to go into Boston, pay them toll or else swim across the river. So said one of the Justices: another thought they ought to let people use their own boat; the other two agreed with him and thought they had no right to make him swim: and that consequently that if he had a right to a boat, without paying them, he might as well have another bridge without paying them either: but Mr. Justice Story proved the whole that the Chief Justice and Secretary urged, to be clear in law: pretty much all the court of the United States said so too; but unfortunately one of them said, "that though the Massachusetts General Court was attempting a highway robbery, it was none of their business": and the thing fell through. If we had other opin-

ions than we have of the nature of these private corporations, we must give them up to such a phalanx of great men. It is not to be controverted in this day, that this is a private corporation; and all its own controversies concerning its property are controversies concerning property, and suits between two or more persons. If it carry on others, in behalf of the State, she must be answerable for their contracts if they cannot or will not make them good: if she do not mean to be answerable ever, she can devest none of her subjects of his estate, till in some other way, compensation by her laws she absolutely assure him.

The Lord High Chancellor of New-Hampshire goes on to say: "Should the rule be established that when private property is taken for publick uses, previous compensation must in all cases be made, it would in many instances destroy all beneficial use of such property, and would render the interest of the individual citizen altogether paramount to that of the publick." He has, as I will show by and by, as far as this case is concerned, the full powers and obligations of the Lord Chancellor of England by statute. It is common for him, I believe, to ask for the judgment of the court of King's Bench, on difficult questions of law. Ours means here by "the publick" this railway: and by "the individual citizen" the owner of the land. In a case, which established the law there, and similar doctrine was sustained by Lord Chancellor Eldon and Lord Chancellor Lyndhurst, and also on appeal, by the House of Lords; Charles Abbott, Lord Tenterden, whom I believe to have been full as good a lawyer as Mr. Chief Justice Parker, says: One of these corporations for a publick highway is "a company of adventurers," and the owner of lands near is "the publick:" and: "That any ambiguity of the terms of the contract (!) must operate against the company of adventurers (!) and in favour of the publick (!): The proprietors therefore can claim nothing which was not clearly given them by the act:" by "contract" he means the act of incorporation: as Lord Eldon shall explain by and by. Our Chief Justice here holds that the railway is the publick: and he also, as I have said, holds without knowing it, that the estate vests as soon as the act is made, because the States' intention to see the owner paid is not to be questioned in a court of law: he must hold it; I can hardly believe him to have read the nonsense about "trespassers ab initio;" and I will produce his own elaborate opinion about it by and by. This is though the State never has paid in a single instance that we know of; though there is no way to make her pay; though she tells us in the acts to look to them alone; and plainly tells us that if we do not in a certain time, whether they pay or no, we shall not be paid at all. I should like this doctrine that the State pledges her honour for the railway's damages promulgated in the General Court. Every body knows she does not; and that they are to be recovered by an action at law against the railway or not at all. If by a fiction of law, which is a counterfeit and imposture, every one's estate may be vested in adventurers without compensation or assurance of it; for their purposes simply; without the owners or the district of country interested in the question's having heard such a thing was dreamed of, till Terence

O'Reilly, Lawrence O'Rourke, Samuel Hale and Patrick Maguire show themselves and say they are the State, and say with truth that Mr. Chief Justice Parker says so too; a trick of despotism a Feudal king would not have played off in England five hundred years ago, without a writ of "ad quod damnum" to save his own rights if nobody's else; he would have let us know they were coming somehow or other: when not ten peop le hear the act read in a July afternoon: if this be law; against the judgments of our courts in similar cases; against the General Court's own words; against the sense of every man in the community; then we do live under a government the most insecure and the most preposterous, the most outlandish and the most ludicrous. Without regarding farther this fiction of law, now, having found out what a railway is, let us see what an article of our bill of rights is.

Our bill of rights, so far as it do not contradict the constitution of the general government I hold to be the supreme law of the land: irreversible by statute. How far the people have a right to alter it themselves is not very clear: but it is certain that till they do, the plain meaning of its language is not only irreversible by statute: it is equally so by provisions of the constitution of New-Hampshire, the judgments of her courts or the ancient common law. The notion of some, with respect to the English bill of rights,that it only proclaimed more publickly what was law before, that courts should look to the law itself for what they were sure to find in it, will not do here. Ours was not meant to inform the world what the law was; but, so far as it goes, to give orders what it should be thereafter. It is the expressed words of the contract of the people of New-Hampshire that they will not, all the rest of them together, infringe nor impair certain rights of the humblest man among them, nor suffer their government to do it either. All powers common to other governments, all despotick power, be it never so right in appearance, so convenient or necessary to them that temporarily have the government in their hands, every consideration of publick convenience or necessity, must fall to the ground in conflict with them: they are not in the bond. As the English bills of rights, there are divers of them, was meant to keep the crown steadier than it might otherwise be: some people might see in ours a disposition to secure each subject from the caprices of his sovereign. I will not argue this question: not being one of those that believe much that when people make a bond of their own "special grace, certain knowledge and mere motion," a bond, made of their own accord, not to do whatever they have a mind to whenever they please, they will keep it longer than they choose. It is certain that the most successful attempts to set right the carelessness or nullify the caprices of our various sovereigns have been made through what is a bill of rights in the constitution of the general government. Never having been in England, in my life, much more than a twelvemonth, I do not know what their publick thinks of theirs: but no practice or custom, however long established, of the legislative, executive nor judicial power, can sustain itself here against the express words of ours. The most momentous power in which our court of the United States has been by itself installed,

it authoritatively exacts from what is a bill of rights. If ours did contain more than was called for; if the scrivener were too officious; with this our courts have nothing to do: they have no excuse for getting out of their road when it is before their eyes written in such large and legible letters on such a guideboard. There would be no doubt of the obligation of English courts to refuse to acknowledge a statute contradictory to any of theirs, if they had power to do it: this our courts have: they must regard ours, as it is clearly set forth in express words, in its direct meaning and no other, as the supreme law of the land. In the great case of Dartmouth College this last doctrine was carried so far, that it is generally understood that the court interpreted a clause against the meaning of the people that established it: wholly by the express words. Though the General Court may have meant, in this case, an atrocious and footpad robbery, and the other court, when it took to the highway with them, did not know enough of the usages of the road themselves to show the others how, and their judgment was contrary to law: still, keeping, like the court of the United States, such a mouse-trap always set, I do not contend for: but in the interpretation of our bill of rights and the consistency of the General Court's statutes with it, our courts are not to be governed by deference to a coordinate power: they have no more power to construe statutes favourably to the power of the General Court than they have to their own; to transfer the judicial power from themselves to them; to watch and sanctify the caprices of other people: they have higher interests to protect and nobler duties to perform. The people of New-Hampshire's notion of their bill of rights is sufficiently set forth when they close with the general orders of the thirty eighth article. It is clear that all property this railway can ever take or lose on its own account,it takes and loses as private property: and all its controversies concerning its property must be determined in accordance with the bill of rights. Except then the State, when, with however publick a purpose in view, it obliges us to sell our land or any thing else to them, do clearly assure us that she will pay for it if these private corporations do not: the damages they are to pay, its value,is a controversy concerning property between private persons,and can be determined in no way but what is allowed by the twentieth article of our bill of rights.

The twentieth article is in these words. "In all controversies concerning property and in all suits between two or more persons, except in cases in which it has been heretofore otherwise used and practised, the parties have a right to Trial by Jury, and this method of procedure shall be held sacred, unless in cases arising on the high seas and such as relate to mariner's wages, the legislature shall think it necessary hereafter to alter it." This is the supreme law of the land: indeed the article says it is a natural right of one of our race: not that it gives it to him; but that he has it: the law must be obeyed. Let me examine this article. If the people of New-Hampshire had tried to express themselves in a way absolutely incapable of a double meaning, they could not have been more successful than they are. They clearly promulgate and

decree that, with the exceptions expressed in the article itself and nowhere e'se, in all controversies concerning property and suits between parties, neither subsequent practice of courts of law, ancient practice of the common law elsewhere, nor statutes of the General Court, shall ever supersede (they say he has it already without a bill of rights, the majority of the people could not take it away, if they made a new constitution); shall ever supersede the right to aTrial and the right to aTrial by Jury. How far that conflicts with the jurisdiction of the Lord Chancellor of New-Hampshire I will not enquire in this letter; it not being material to the question. But if the right, whatever it may be, the General Court gives to these private corporations to my land against my will, the very franchise itself, be as much private property as my right to my freehold; and they, and the courts with them, contend it is; the damages the corporation is to pay for devesting me, are a controversy between me and them, not the State, concerning property and suits between parties. The State does not pledge her honour to pay my correlative and coeval claim to its price: such fictions of law will not do in the nineteenth century here more than in England: it is too late in the day. "Hæc ludibria religionum," as my friend Pontius the Samnite told the Roman Consul begging off on a point of law, "non pudere in lucem proferre,et vix pueris dignas ambages senes ae consulares fallendæ fidei exquirere?" They are in the dominion of this article, if it cannot be shown that a different sort of Trial was established previously to: 1792: or rather: 1784: when the article was established law as now; and be shown what sort of Trial there was. Some Trial there must be by the constitution of the United States. I will throw into another paragraph the consideration of whether this property, this right to take the land against its owner's will, is in this railway, fairly vested, till the Trial by Jury and a Trial, if the General Court ever attempted to vest it in them before: or at any rate: till the owner's right to his Jury have so much accorded to it, that he has some chance to know when he is to get it, to say nothing of his compensation: all I have to do with now is whether the supreme law of the land gives him the right to a Trial by Jury or no at all. I hold that he has a right to it, under this article, which neither Railway, General Court nor any other court can get out of him, without it be shown without doubt, there can be no constructive loss of the Trial by Jury, that he would not have had it previously to the time I have named: it must be shown without ambiguity or evasion: the contrary custom must be described with accuracy and exactness and clearly proved. The language of these acts might be thought to be that the Trial by Jury was a matter of favour on the part of the General Court to its humble subjects: the doctrine promulgated by the Courts in this judgment might be thought to be that it was of no consequence at all: the language of the bill of rights is that "it shall be held sacred:" it says nothing about Trial by committee of men named through the legislative power: and the people mean to have implicit obedience to the precepts they give. Even in Massachusetts her courts, here, now lately, have said that they could not assume an intention on the part of

the General Court to take it away. The same courts held the same doctrine, more than forty years ago in a suit, both parties to which quarrelled about property in franchises: and this doctrine was held by a court composed of men of the greatest eminence. The General Court had provided, and within a time too, if I recollect right, I have not the book, prescribed in the act, that a wealthy corporation should pay full compensation for any injury sustained by an humble person, not to his lands but to the future proceeds of his franchise (is a franchise better than fee-simple?) in a way full as unobjectionable as in this railway's act: the court never troubled themselves about the General Court's neglecting to give him a Trial by Jury to determine the damages to his franchise; they told him it was his private property: and that no act of the General Court could take away his right to a Trial by Jury to ascertain them. As this corporation was a publick highway and indeed both, was it clearly not the opinion of that court, that these things are in the dominion of this article? Had such a judgment been solemnly pronounced (the thing was not disputed there) in New-Hampshire, there would be no place for farther argument. It will be asked: why I raise a ghost to attack it? That it is not disputed, it will be said, that he has a right to a Trial by Jury. It is on the high road to being disputed, when every such act exposes the owner to the risk, and a terrifying one to very humble persons, of a large sum of money to pay, for getting as a boon what belongs to him already; one would think: when the General Court drives a subject off his land, at its own pleasure, and says he shall be paid for it by somebody else, if he do not break first, at some future time named by them, a price for it determined by people named through themselves; without he is willing to run the risk of a suit at law with a gigantick corporation: when any thing is tampered with, without sufficient reason, that the meanest subject thinks, and the bill of rights says is, his "inestimable privilege:" and the records of courts of quarter sessions, a century old, are rummaged to swindle him out of his Trial by Jury on so large and increasing a scale now. The thing is too plain: the proposition concerning the Trial by Jury must be agreed to as soon as stated: if this corporation be a private corporation, and if its disputes about damages be what I have said: if the bill of rights be what I have said too: This owner of the land, till it be shown that he would not have had this right in the year: 1784: till it be shown circumstantially and satisfactorily proved; had a right to a Trial by Jury: and of this right no practice of courts since, no common law elsewhere, and no act of the General Court, till it "expressly suspend the laws of the State," can strip him: neither by implication nor even in direct words.

To show that he had no such right, it must be completely proved, that in the colony or State of New-Hampshire, the doctrine that the damages for a private corporation's taking land in this way, without its becoming the State's and her guarantying their payment, and without a Trial by Jury, some time or other, was acknowledged by its courts. Where is the judgment to that effect of a court of record? The custom with respect to town and country roads would not prove it: nobody will

pretend that their franchises are private property or their damages controversies concerning property between private persons. But by the very highway act: "anno regis Georgii (primi) quinto (: 1720 :)" which as far as I can see from the book, was in force till: 1771: the Trial by Jury is expressly established in all such cases. Such franchises of ferries as subsisted as private property does not prove it: for the right was the publick's already when they were granted: the right of landings to the ferry would be more to the purpose: but this is mere hair-splitting: and no record of any dispute subsists. Grants of such unrestrained franchises as these, of bridges and roads, if there were such, which I do not know of, when the lands pretty much belonged to the crown or the colony or the publick in some way, or the Indians or the people that asked for the franchise, will hardly be a respectable crowbar for our courts to carry about in their hand to overthrow the Trial by Jury, in our stage of every thing, in a class of cases increasing in number with uninterrupted speed, and in which the chance to get rid of it,is sure to be made careless use of and ill use of, in the end. The power of the General Court to oblige the owners, most of them in practice, to accept of a Trial by committees, in place of the Trial by Jury, has not a shadow of foundation, and the statutes, so far as they embarrass their getting it, are contrary to law. I have looked through this book: purporting to be published: 1771: one statute it contains was made in April of that year, called "acts and laws of his majesty's province of New-Hampshire:" by order of the general assembly; and which also contains the commission of president Cutts, which was the charter of the province and erection of her courts of record: uncommonly well printed at Portsmouth. It must take strong proof to satisfy a historian, that so uncalled-for and unlooked-for a deviation from the common law of England as taking away a man's Trial by Jury, during one hundred and forty years, from the time when my ancestors, Ambrose Gibbon and others (I should almost take it up as a personal quarrel), established the first permanent settlement of the English in New-Hampshire at the mouth of our creek: 1631: could subsist, without being ever alluded to in the statutes or in Cutts's letters patent. The highway act gave it, as we see, when there were not fifteen thousand people in New-Hampshire. No franchise of a publick highway to take toll appears to have subsisted but some ferries: they of course show nothing. It is plain that as late as: 1771: the province nor its general assembly knew nothing of their own power or that of the crown to take one man's estate and give it to another by statute, without his getting a Trial by Jury. No English act of parliament, for that purpose, would have changed the common law here: it would have rested on the despotick power of parliament alone. Private property was carefully looked to. The statute in relation to white pine trees, so essential to England's interests then, excludes in direct words such as were private property: it extends to his majesty's woods alone. Royalist days put out no such doctrines as these we hear now. I can find no laws justifying the supposition that such doctrine had got in down to: 1784: Fish out your custom, then, land it on the bank and let us see

what it is. They will not trouble themselves about history much: of course this system of incorporated wealth was not foreseen; or it was too momentous not to be named. It has nothing to do with the classes of cases excepted, which were meant to be very different. If the State do not guaranty herself the performance of these contracts, and she do not make them with the owner when she vests any of his estates in them: I consequently hold: That any of her subjects had in him, when his property was thus taken from him by an act of the General Court and given to a private corporation, a right to get his compensation for its loss finally determined by a Trial by Jury: 1792: and consequently there is in him, in the same case now, and nothing so long as our present constitution subsists, can get it out of him, a right to a Trial by Jury.

I shall be asked, I have said, why I raise a ghost to attack it: it is not disputed that he ought to have his Jury. There is good reason for my dwelling on it. When I look into our law and see the consequences of statutes' being drafted by people careless of the law or to whom it is unknown, and interpreted by not much better: when I see the safety of the estates of thousands, throughout these States, resting wholly on the faith of statutes and often, of statutes, which if I wanted to make them stand good in law, I should have great trouble in doing it: and then foresee the likelihood that the legislative power may, in the end, take advantage of this to disperse and destroy them; I shall continue to believe it as well, that the habit of obeying the prescribed methods of law, where tenures of property are concerned, should be established. The disregard of the Trial by Jury in devesting estates for the good of these private corporations, kicking it out of the way with contempt and putting the humblest peasant in danger of the costs of a regular suit at law to get it, is an outrage upon justice and a disgrace to the General Court: but suppose, on investigation, that it really is not disputed that so far the law is plain: that the position that the owner ought to have a Trial by Jury and his right to compensation are positions the court does not mean to storm: very good, my learned friend, their artillery is turned, where those who do not know the force of fictions of law, do not expect to see their balls coming: and it is deliberately upheld by our High Court of Chancery, indeed taken for granted: That when the law says the owner has a right to compensation and a Trial by Jury, the law by no means on that account necessarily intends that he shall ever get any of either. If they be right, fictions of law can boast of a career of victories unexampled in their native land. Well: let us see what compensation is: our Lord Chancellor says: not very clearly what it is, for he thinks it may be any thing; but whatever this "general provision as in the opinion of the legislature," may be: "That it is subject at the same discretion to the delay attendant on the action of a committee, and of a Trial by Jury, and also to the contingency of non-payment: but if payment should not be ultimately made the condition on which the land was entered upon might be considered as having failed, all concerned in the acts done upon the land would in such case become trespassers ab initio. With this

construction of the acts the owner would either receive compensation for the land, or it would not pass from him, and for all intermediate acts he would have the ordinary common law remedy against trespassers." The Lord Chancellor of England is guardian of all infants, idiots and lunaticks: as to ours, people can judge for themselves, which way the guardianship ought to be. The notion that the General Court has power to make the owner take for the value of his estate, ascertained by a Jury of the country and paid in the lawful coin of the realm, "such general provision as in their opinion:" who have no power to ascertain it at all, shows folly enough: but that they can go on and make him take this compensation, such as it is, "subject to the contingency of non-payment:" and that the people they sent to kick the owner out by law, should be afterwards kicked out by him as "trespassers ab initio:" by law too: is a new notion of the tenures of property. The thing is too laughable: but our tenures of property are not to be sported with in this way by half a dozen young gentlemen in a committee-room of the General Court, of a summer's afternoon after dinner, with swindlers in the lobby and managers on the floor to egg them on, and people on the bench, that ought to have a cap and bells or a straight jacket, to back them both up. Let us examine what compensation is; and when the estate is completely vested in the railway on the acknowledged principles of our common law. I am grieved to differ from our learned court: I am still more to differ from what has been the practice: but at such a defence of the practice as this, it is impossible to do any thing but laugh; though the question involves the deepest foundations of the tenures of property of the private corporations themselves as well as every body's else, against each other and the General Court.

The State, as far as I can understand it, through its General Court, says it has power whenever it will to create instantaneously two equally indefeisible estates: neither of which existed before: and neither was vested before in the owner nor the corporation. These must be completely equal to each other. The one is the corporation's right to his land: the other is his right to their money for it. This is the only sense I can make of the American law in relation to private corporations for public highways. I am not disposed to dispute the General Court's right to perform this feat; that they can vest a complete right to one without vesting a complete right to the other: I utterly deny: Mr. Chief Justice Parker to the contrary notwithstanding: who says: "That compensation subject to the contingency of non-payment is compensation." The State's right to take private property without compensation herself will not be pretended: unfortunately, the American doctrine with respect to these damages has been copied from the English: whose parliament is beyond control. Their old law of highways, the king's, of turnpike-roads and such, is founded on wholly different principles: but that of these franchises is more like to deceive us: parliament can vest an estate there in them, at least nobody can dispute it, without compensation. The State here cannot even in herself. It is plain that the first step in this shifting of estates is for her to get the estate out of its owner

into herself. She must give an equivalent: as good an estate as he had before in every way. She must absolutely give him its value in money when she takes it; or she must give him absolute assurance of it. No law can hold an estate with a possibility of his never getting possession of it equal to the one he has in possession. If she take it for her own works he has an estate in possession; for then that her honour is pledged is not to be disputed in a court of law; at least I shall not do it: and her honour being necessarily incalculable in amount and inexhaustible in nature, contains in itself the damages however large they may turn out, and they are as good as paid. But here is the hinge of the whole question. If she assure them their property in their franchise: she must assure him his property in whatever damages he is to get for the injury their franchise does him. They are not to have an estate in possession and he a contingent remainder subject to be defeated by the bankruptcy of the corporation or divers acts of the General Court. To get over this insuperable difficulty our courts assume, as I have said without knowing it, that the State pledges her honour that he shall be paid when she attempts to vest his estate in them. If she do not; their franchise vests necessarily in them no property of his at all. The simple question then is whether she does: it is notorious, it is indisputable that she does not: and the fiction of law cannot stand. The whole estate is in nobody but him. She obliges him to sell to them for its just value. The English precedents have deceived us. The value must here be positively ascertained by a Trial by Jury; and the value must be paid before the estate is completely devested. The law can contemplate no contingency in this matter: it is an outrage to suppose it. If his estate remain contingent on their solvency or any thing else: theirs must be contingent too. The State cannot force him to take their credit: but when she summons a Jury and pays him what the Jury says through them, or any body else: then she devests him of his estate and vests it in them She cannot make him take in return for his estate in his present possession, another which, it is acknowledged, can never be in his actual possession till the positive occurrence of a future event which innumerable circumstances may keep from happening at all. If the State choose to do certain things through other people, and mean to give them her own full power; she must be answerable for all their acts and contracts in her employ. If she will not be so: she makes them private persons without her full power. She can devest none of her subjects of his estate till, when she does so, she vests another estate completely equivalent in nature in him. Such is the lawful coin of the realm or the pledged honour of NewHampshire. The one is just as good as the other and nothing else is as good as either. She cannot make him take in return for his estate an action for damages against some other subject at common law: nothing but the money: Or her assurance, her obligation, her debt and her bond: hanging upon no dubious and uncertain event. She is not to get off with assuring him that the sheriff will give it to him, nobody knows when, if the corporation have it to give and the courts and sheriff together can find out where it is. This

is no absolute assurance that he shall be paid. This is not equal to the estate of which she devests him, and they say she vests in them. Then if she choose to make such a contingency; that is her business: they accept their franchise such as it is. These private acts are nothing to him then; they neither vest nor devest: till agreement; or the controversy between the parties is determined by a Jury of the country and the money paid: then the estate, such as it may be, is completely vested. English precedent as I have said has no application here. A statute is their supreme law of the land: and similar corporations there are created by a sort of publick act: but I will venture to say none such are made without all people, to be affected by them, being fully warned, heard if they want to be, and the government fully satisfied that the corporation will pay. Parliament would about as soon think of devesting estates in this careless way as of dethroning the queen. The power of the State to take away estates and vest them in other people, I am not disposed to argue about; her power to do it without giving her own credit or the money; I utterly deny: but when the value is determined by a Jury (summoned by statute, I will agree to no tampering with tenures of property); and the value is paid: then the estate is completely vested and he resists at his peril.

The State, as I have said, wilfully leaves things in this way, and with her reasons in a court of law we have nothing to do. The damages are a controversy concerning property between two private persons and the suit can be determined by a Jury alone. The courts cannot make him take "security to their satisfaction" in their private capacity, for it is nothing more: the Jury alone can tell, by the supreme law of the land, what is to be paid. No matter whether it be right or wrong that It should be so: it is enough that is so: no other evidence in the world but their judgment can be taken by a court of common law, nor a court of equity either, as to what his estate is worth now. The courts cannot make him take the other party's bonds for what the Jury will "probably" give; how are they to know what they will give? The Jury is as indispensably required to find out what the bonds should be as what the money should be: and has the State given the court right to judge of the goodness of the bonds and to assess the damages? Are they going to take this under their equity statute? We should soon enthrone our High Court of Chancery into our lord paramount to hold our estates of: if they be to devest estates at pleasure. They have no power to guess what the compensation is to be. No testimony they can get at is worth one farthing in law till the Jury tell. Therefore then: If the State, through her General Court, give him in return for his estate, neither its value nor her pledged honour for it: she gives them no estate in it; till she summon a Jury by statute: till the damages have been assessed according to law: and they are paid: then their estate, in expectancy before, is completely vested. The other doctrine has arisen insensibly from jumbling these private corporations with English turnpike-roads and their corporations for publick highways; where the law is essentially unlike in theory and in practice still more: from

jumbling them with the State's own works, when she does pledge her honour: from knowing that incorporated properiy is always in danger, though they are taking just the right way to crack the string by pulling it too hard: and, when such things were popular, from dread of the legislative power: the risk of nonpayment may be generally of no account: but unsettling the tenures of property in this careless and contemptuous fashion is a serious matter. What these vast interests are to be the better in the end, in these United States, for arraying the tenures of their franchises, and the tenures of their property against other franchises, in such a cloud of intricacy and suspense, I do not profess to comprehend. Well: the owner's right to compensation and the corporation's right to his land I defy all the lawyers in the world to make for an instant separable from each other. His right and theirs must keep along side of one another: the door must not open outwards only; it must open both ways: if his estate be in expectancy; theirs must be so too: if his getting into their money be doubtful; doubtful too must be their getting into his land. But when the damages, assessed according to law, have been paid: then they go in. The law does not mean to treat them harder than him; nor him than them: it must mean to treat them both the same: if they must wait too long for a Jury; let them look out for a better act: a court of equity cannot relieve here: if the General Court do not tell them how they are to get a Trial by Jury; let them get a better act: a court of equity cannot summon it for them: "The State," they say, "wants us to go in now for the public good; forthwith!" No such thing: she knows the public good; and if she did not tell them how to get in according to law, she meant them to wait till she did. How can she tell us any thing but through the statutes? We can, in these things, get no kind of a sound out of her any other way. Their right in other people's land must rest on the statute, here and in England both; interpreted by the common law: not on the will of a court of equity. Here these statutes must also consist with the supreme law of the land.

After this hear our Lord Chancellor's nonsense: "The corporation has filed at once without waiting for the report of the committee, a bond conceded to be amply sufficient (conceded by whom? it was not by the petitioner, I am told) to indemnify the petitioner against any claim of damage he may recover and have professed a readiness to place with the clerk of the court a sum in specie sufficient for this purpose in lieu of said bond, if this would obviate his objections to the acts of the corporation." What in the name of folly had he ever to do with filing this bond? Are he and the clerk of his court going to take the place of the Jury? Show me the statute! Though the State's statute to that effect would have been good for nothing if she had made it: but she never did. Does he absolutely think that he himself has power to devest one of his estate and give it to another, when any body files a bond in his court of equity (what business the bond had to be filed there I do not know) or shells out money to the satisfaction of him and his clerk? If he had done such a ridiculous thing as to file this bond, he need not

have gone on and told every body of it. I will say more of what our courts of equity ought to see to, at this time, before I get through.

One of Mr. Chief Justice Parker's most celebrated judgments so well expresses my views on some of these points that I will transfer some of it. "This franchise is property. No part of a man's property shall be taken from him or applied to publick uses, without his own consent or that of the representative body of the people: bill of rights: this has always been understood necessarily to include, as a matter of right and as one of the first principles of justice, the further limitation, that in case his property is taken without his consent, due compensation must be provided. It is not supposed here, that even the consent of the representative body of the people could give authority to take the property of individual citizens for highways, bridges, ferries, and other works of internal improvement, without the assent of the owner and without an indemnity provided by law. No distinction is made in the constitution between property of one description and that of another: and if a franchise is property, we do not discover upon what ground it claims an exemption from the same liabilities to which other property is subjected." There spoke the spirit of the common law: then spoke the shade of Sir John Holt. "The position that the defendants may take their property because the plaintiffs will have a right of action, cannot be supported. Had the plaintiffs seen fit to suffer their property to be taken and sought redress for the injury by action, it might have been supported: but this is not the compensation intended by law where property is taken for publick use." "It is not by way of damages to be obtained in an action for injury done, that the party is entitled to be indemnified for property thus lawfully taken." "So far as the defendants may act lawfully under their charter they will not subject themselves to an action for an injury. So far as they cannot lawfully act, they ought to refrain from acting." (So said Lord Chancellor Parker: Lord Chancellor Parker says: "This compensation is subject to the contingency of non-payment: but if payment should not be ultimately made the people concerned would in such case become trespassers ab initio, and the owner would have the ordinary common law remedy against trespassers." And this he said was compensation: "Zeu, alloi te theoi," where is he going next?)." His honour then denies justly: "That equity will not relieve against a statute: That the plaintiff's property may be taken for publick use, although no compensation is provided in the charter because the plaintiffs might have an action." This is the law and why? Because the law would not let an estate vest through a wrong; not only that: Because a right of action is an estate not so good as the one the owner has in possession. It is no equivalent. "If," says he farther: "the defendants have no right and proceed, the plaintiffs might be without any adequate remedy: for upon a judgment at common law for damages against the corporation, all the corporate property might be wholly insufficient to indemnify the plaintiffs for the invasion of their right. The individuals concerned might be able to respond and still the remedy inadequate." To be sure: his honour sets the matter at rest.

All the State can make me take in return for my property is its value or absolute certainty of getting it. The two rights are the same; one cannot exist before the other and she can give no more than she has. If she give me neither the money nor her absolute assurance of it she has vested no property of mine in herself and can vest none in any body else. His honour's position I thought impregnable till he stormed it himself. The same chancellor, bequeathing laws to his court, establishes that the common law remedy against trespassers, at some future day, is compensation at common law!

Let us look and see if the General Court have been intentionally careless of this man's rights: for it looks to me as if they were better lawyers than the courts: who go so far to please them as not only to establish the lawfulness of the unlawful powers they assume; but of those they never did. I wish the General Court would turn round and thank them in registered statutes like the statute of Edward: put the bill of rights and the amendment to the constitution of the United States into a statute and declare them to be law: it would be advantageous to our courts. The railway is the party interested now to interpret them to show that the owner's compensation and Jury are found in their statutes: not he. He does not hold his estate of a statute. It is their look out to twist them to a shape that will justify a court in determining that they do assure him of the certainty of both: for that is what is to vest the property in them. Not a spark of it can they draw out of him if they cannot. The New-Hampshire General Court, after repealing an act which authorized them to take and hold land for embankments, et cetera: just as much and wherever they pleased in New-Hampshire; in express words (a pretty franchise to be huckstered through a country by jobbers: who is to stop them? What is to keep them from extorting money from any body they choose by threats of destroying his property? No Trial by Jury or pay till they be done: the General Court they say could not without the right to repeal, it would be to revoke their grant; and the whole year must go by first: few people would risk a suit with them: and the Courts would not stop them by injunction if they took half a dozen villages fifty miles off: as we shall see): after repealing such a statute as this, worthy of Mourad the second and Selim the first; Enacted by a publick act: That the corporation or the owner (what has he got to do with it?) might apply by petition to the court of common pleas for the county, for a committee to assess the damages and report to the next succeeding court, in the same county, of common pleas: the committee was to give fourteen days notice: and then either party was to have a Jury on application therefor in writing. The report of the committee was legal testimony, with other for the Jury: and was evidently meant to be for the court of common pleas, for a purpose we shall see. So far; so good. The General Court knew he had a right to a Jury; and meant to assure him he should get that: but it vests no estate in his land in the railway yet; for it does not assure him that it will ever do him any good. The State has not assured him yet that he is ever going to get the damages the Jury is going to assess: and it is none of

his business to petition in writing for the Jury: it is the railway that wants to shift the estate. The seventh section of the same act does have in it some faint inkling of what ought to be clearly set forth: if, rightly interpreted: as our courts interpreted it, he may be kicked out of doors two or three years before it come into actlon, and then do no good: it is enough to carry them in, after the damages have been assessed according to law and paid: but no more. If this section were not in the act, the whole is good for nothing; not worth one single farthing; and vests no sort of estate in them, in expectancy or possession: if he say no. It says: "That when application for a Jury shall be made to the court (that nor no other court can get in a Jury before the report of the committee, for the statute itself tells when) to estimate the damages for lands taken as aforesaid, the court shall, if requested by the owners thereof, require the said railroad company to give security to the satisfaction of said court, for the payment of such damages, as shall have been assessed by said road committee, or as probably may be assessed by the Jury, for the land as aforesaid, and all the right or authority of said corporation to enter upon or use said lands except for making surveys, shall be suspended until they shall give such security." Well: is there any man in New-Hampshire such a fool as not to see that this statute, however all the courts about interpret it, ought to be interpreted to vest no estate in the corporation against the owner till all these requisitions have been fulfilled: for then it is a lawful statute! It has told the corporation how to get the owner's Jury and when; but as the courts interpret it, it is good for nothing again: they say it means to force the corporation to pay him by keeping them from using their railway two or three years after: for the credit of the State I shall believe no such thing. I will make their statutes lawful if I can. That with such law as is promulgated by our courts ringing in their ears, the General Court should think it could make any body take security to the satisfaction of the court of common pleas (!) for such damages as may probably (!) be assessed by a Jury for his freehold, is not remarkable; when our High Court of Chancery thinks it can make him take "security to their satisfaction" for it, or theirs and their clerk's, without the Jury or the General Court's troubling themselves about it. But even the statute, interpreted according to law, does not force him to take this till the court of common pleas get the report of the committee. It did not mean to give the court of common pleas authority to devest him by witnesses sent out for of its own power, and roped into court by a catchpoll. This statute can be interpreted in accordance with the law of the land. It names the time when the Jury shall act; and can be interpreted to say clearly that the vesting the estate in the railway shall depend on the assurance of the damages' being assessed according to law and paid: or it so nearly does so as to be more than is common creditable to the General Court. If I know any thing of the New-Hampshire statute-book, they hit ten times nearer the mark this time, than they do in more than one shot out of a hundred. I consequently hold: That even by the statutes that incorporated them: Till lawful notice was given by the committee

appointed by the first court of common pleas and they had reported to the next; Till security was given to the satisfaction of this court with the report of the committee before it; and beyond all this, after complying with their acts of incorporation, on which rests their franchise; Till the damages were assessed by a Jury and paid: This corporation's franchise (and none of it had been done when the injunction was asked for) gave it no right to build a railway in any body's land that chose to object to their doing it. Their loss of time or the publick's,is no concern of the owner's in a court of law or equity. If the State choose to execute projects, to a certain degree of a publick nature, through other ways than the straight one, to get rid of trouble and responsibility herself; through indirect agents and not direct ones: so far as her responsibility is taken away; so far is the power she can give to them. So far as the delay, inconvenience and cost are increased, she is assumed in a court of law or equity to know the public good, to grant these charters for it; and to foresee the whole: the railway, the court of common pleas, have no right to put in their oar to do more than is in her statutes: and a court of equity's undertaking to interfere and sell the land of one of her subjects to another against his will, at a price fixed by them, filing bonds and counting money for it, discovers either an ignorance or fatuity on their own part, when no statute tells them to, or a hope of the same on the part of the publick, absolutely unexampled.

Hear the decision of the Lord Chancellor: "If there be important conflicting rights, betwixt these parties, involving questions of doubt and difficulty there is not sufficient ground for an injunction until such rights can be settled on full hearing and investigation, the party applying for such process, must either show very clear right on his side, or with a probability of right he must show that if his adversary be in the wrong and be not restrained,very great, and perhaps irremediable injury may ensue." There are no less than four astounding doctrines here promulgated by a Lord Chancellor, now engaged in marking the bounds of the most important power known almost to the law, in direct contradiction to the fundamental principles of a court of chancery: the previously undisputed right of the owner no court of equity can consider doubtful till the new one be established to be lawful: and an injunction must be granted till full hearing and investigation, if the injury be of sufficient consequence, or till the right of the new aggressor be determined by a court of common law: neither has a court of equity power to interpret statutes but by the strictest precedents and principles of the common law: neither has it a right to take into consideration the doubtfulness of the right and the doubtfulness of the injury associated together to strengthen each other: if the railway's right were only probable, and the improbability of the other rested on nothing but the probability of that, the injunction must issue till theirs be established: if sufficient injury be proved to be taking place. The last is a question wholly separate from the first. No court of equity is at liberty to jumble them together: on the first it must tell the owner it will resist the aggression and do it by the whole power of their court, or it must fairly tell him

that it will not, because the aggressors have no right; and he must drive them off himself, or demand the assistance of the common law to do it. The other reason should be stated singly: and was the sole excuse for their not instantly issuing the injunction upon the very statement they make of what the question was themselves. An injunction is however, issued now, very liberally in this respect, and is getting to be, what it really is, we shall see by and by, a sort of common law remedy, to deny which a Lord Chancellor is meant to have very little discretion. The precedent was of vital importance: it was the first under these statutes, which will be so common, it was the commencement of the jurisdiction our High Court of Chancery is establishing: fifty people either petitioned on the same grounds, or were going to if this were obtained: and it will be seen that the court must have known,that every body else would know what this long story meant about filing bonds, and silver and gold in their clerk's hand: That the railway meant to get their sanction to an irregular proceeding of the gravest nature, of a very different description from what I have hitherto examined; and were in fact making use of the State's high prerogative to devest her subjects without any charter at all.

If any thing could show clearer than another the carelessness and disregard of the law which has so long reigned in the interpretation of her statutes, and in New-Hampshire's courts has so long triumphed without resistance, and the hopelessness of setting it right: it is that the petitioner's counsel, for I judge from the opinion of the court that it was not in it, should not have laid this before the court. I suppose he thought it would have been of no use if he had. But, as far as I can learn, it was not necessary for him, on English precedents, to do it. Though the act of their incorporation be a private act, the nature of it is still so publick that, when it is once before him, a chancellor is assumed to know it thoroughly and to make himself certain that the rights, which rest on nothing else, do subsist. If he had stooped to do this, he must have found all doubts as to his course removed and either issued his injunction or told the petitioner that he had another remedy without coming to him: for the railway had no shadow of right then, nor till the next year, did they or could they get one, in his land; for they deliberately acknowledged, and he had nothing to do but put the engineer on his oath to prove he was ordered to do it, a Chancellor has power to do it instantly in court to satisfy himself, that they meant to break the statute which incorporated them. Let me examine this strange proceeding.

Before I forget it however I will say that there was one redeeming circumstance about this opinion: and that is that the court had sense enough not to tell the world one thing they went on: and that was originally express or constructive assent of the owner. No court of equity could be suffered to remain among us that took up such a creed: so dangerous in nature and so bad in law: under these circumstances from various reasons. There were no contracts made in consequence of his assent: for every body else was waiting to petition too. How could his assent bind him and how was it proved? It could not bind

him if they had no act at common law: it could not bind him in a court of equity, if they had, if he acted from such threats as these people are known to have made: not if he made a deliberate conveyance Was it proved by the corporation's agents or his not resisting a hundred labourers? Was an estate devested by affidavit of the opposite party as to a disputed fact? It was devested by the single affidavit of the land-agent of the corporation. The refusing this injunction, here, with this opinion tagged to it, as completely devested him,for all practical purposes for such people as him, as the same Chancellor's court of common law could have done it. Such a doctrine does not even accord with what fell from a New-York chancellor on it: and the best of it is that he says the estate vests when the money is paid according to the statute. Such a doctrine would indeed open the door to oppression, circumvention and swindling wider than ever: determining that the nonresistance of an ignorant, humble farmer, was irrevocable assent to devest him of his estate, exposed to the threats and arts of their agents, and overwhelmed by the reputation of the counsel of one of these gigantick corporations. Whether the court had power to determine any thing about it, on a simple petition for an injunction, I should very much doubt. There is a court of common law and a Jury to determine whether the right of these corporations is established: and a court of equity is to see that the owner is protected it till it be: or tell him how he can be. Tell their whole doctrine to the shade of old club-foot Bell; publish it in Westminster Hall; I should wink as I looked to see shaking the mane and tail of the graved lion on the Great Seals,and tremble for his roar as he sprang on the jackass. These chancellors are now establishing, by precedent, what their power is. They are fond of dealing in bonds without being told to: is there any bond filed to secure the different subjects of the State, for they are the publick, that the General Court will not be swindled out of still more unlawful acts; and a High Court of Chancery stand ready to interpret them and uphold these corporations in a still more unlawful way?

Now as to this charter: it is not necessary to bring forward Mr. Chief Justice Marshall or all other great lawyers to establish that this corporation must find all its powers in its acts of incorporation; for it is an axiom of the common law: and one which a court of equity must obey. He says of such a corporation: "It may correctly be said to be precisely what the incorporating act makes it; to derive all its powers from that act; and to be capable of exerting its faculties only in the manner which that act authorizes." Neither need I look up authorities to show that this axiom has had paid to it by the courts of England, the very paradise of statute property, the deepest submission: a submission which looks excessive to us, till experience shows us the impossibility, in practice, of substituting another doctrine for it: and till we remember that as, by a fiction of law, all corporations are established for the publick good, the law goes on to assume that if the same publick good require a change, the State will always make it. The adjusting statutes, of his own authority, to meet the wishes of those to whom the franchise is given, and

supplying their deficiencies, is a power the Lord Chancellor or the Master of the Rolls has not yet arrogated to himself. The notion that a private corporation and a court together can make us take,"the common law remedy against trespassers", or, a likelihood of our damages' being assessed and paid for the damages themselves is going a good way here: but the notion that they can make us take the likelihood of a statute's being made at some future day, for the statute itself, has not yet been broached where her majesty keeps her Great Seals: the lion's mane would rise once more. Can this corporation take land against its owner's will, if it comply with the law in every thing else, except where the State tells it to in its charter? Has it a right to do it, because it says it has reason to know that another charter to that effect will be by and by given? Against rights secured by laws now in force? Before the act is made or considered of by the people they say are going to make it? Has the sheriff a right to hang a man before he is tried, because he says he knows he will be and found guilty? How is a court of equity or the corporation to know they will make such an act? Does the General Court give "security to their satisfaction" that it "probably" will? Do they know it a year beforehand? Did any body ever know what the General Court would do a day beforehand? Did they ever know themselves? This is carrying out the "bond" system pretty well: Tick for the statute; tick for the court of common pleas; tick for the Jury; tick for the verdict; and tick for his money: Every thing else but the owner gets tick; but no tick gets he: his land is taken; his house pulled down and a locomotive run where it stood: This is the first step in the process to get the act of incorporation, and make inhuman its refusal: as we shall see. The owner's right till the statute was produced was indisputable: as the railway's whole right was, as far as charter went, the gift of this statute: the Lord Chancellor of course read the statute and understood it: their adverse right was shown by investigation to be complete; or else he told the owner where to get protected: or else the railway's right to take his land without a charter was made clear to him. I have ventured a little way into the labyrinth of the law but not far enough to get hold of the right thread of precedent for a Lord Chancellor's going on tick for a statute.

One would have supposed,on superficial consideration, that the rigour of the common law would have relaxed with the enormous increase of this sort of corporations and of people interested in them in England: or that the growth of more liberal principles, so called, would have given to parliament's interference with private rights on their account, a wider range. But the decisions show a very different public opinion, as well as law, concerning them from that of our court's. We have seen what the Chief Justice of the Court of King's Bench called them: and he went so far as to determine that a canal could take no toll from the chief part of the boats conveying merchandise on it: because the statute gave them no right to take it but at a place where they did not want to go. John Bull would keep no such law as to interpreting statutes a going, did he not know its use to protect the publick against them and

them from each other. The ablest chancellor since Lord Hardwicke says that he will use his utmost power of his court to protect private property against any acts of these corporations, beyond the strictest interpretation of their statutes: that he can listen to no pleas of expediency nor compassion from them: they must wait for another act. Let us see what Lord Eldon does say about deviating from the course set forth in the act; the interpretation of such statutes; and the obligation of his court of equity to protect private persons against their wandering about at their own pleasure. He confirms Lord Tenterden's doctrine; it was again supported by Lord Lyndhust,on an appeal to the Lords, and it was confirmed by them. Neither of the two Tory chancellors had found out, what our moneyed interest upholds, that the property of the subject should be left to the mercy of careless making, or executing laws, and a free interpretation of statutes. Well: hear Lord Eldon: "I follow and adopt the expression of the Lord Chief Justice of the King's Bench, and I am glad to fasten myself in some measure on his great authority, and say that, when I look upon these acts of parliament, I regard them all in the light of contracts(!) made by the legislature, on behalf of every(!) person interested in any thing to be done under them; and I have no hesitation in asserting that, unless that principle is applied in construing statutes of this description, they become instruments of greater oppression than any thing in the whole system of administration under our constitution. Such acts of parliament have now become extremely numerous; and from their number and operation they so much affect individuals, that I apprehend those who come for them to parliament, do, in effect, undertake that they shall do and submit to whatever(!) the legislature empowers and compels them to do; and that they shall do nothing else:(!) that they shall do and forbear all that they are thereby required to do and forbear, as well with reference to the interest of the publick as with reference to those of individuals."(!) He then denies the right of one of these corporations to go to(!) an owner's land, though they may have right to take it against his will,by any(!) other track than the one fixed by law: though it may be a thing of complete indifference(!) to his interest which way they come. That he says is his(!) business to judge of not the corporation's nor the chancellor's. They can take nothing but in the way, and where, set forth by the statute. He also says: without asking the owner to make out, as the Lord Chancellor of New-Hampshire does, the immediate certainty of immense and irreparable injury: "I have therefore stated, and I have already more than once acted(!) upon the doctrine, that if a deviation from the line marked out by parliament were attempted, I would (unless the House of Lords were to correct me) stop(!) the further making of a canal now in progress; and for this reason, that a man may have a great objection to a canal being made in one line, which he would not have to its being made in another; and particularly, he might feel that objection in a case where parties, after obtaining from the legislature leave to do one thing set about doing another. It may, I admit, be of no greater(!) mischief to one owner, that the canal should come through the lands of this person

or that person; but to that my answer is, that you have bargained(!) with the legislature, that you shall do the act they have authorised you to do and no(!) other act." He then refuses to let them spend more money than was at first expected, to widen or deepen their canal, as it might injure individuals more than was given them a right to by their act, a quarter of a century before; and says; if they can get out of their straitest limits at all: "What is to hinder them from carrying it from sea to sea? Why, there would be no end of it: They are not at liberty afterwards to injure the interests of parties by making what is quite a different canal:" and again: "If consequences were to be produced by an alteration and improvement in the canal: still, I say, if the alteration be not sanctioned by parliament (!), you are not to bring about the same(!) consequences by means other(!) than those which the act of parliament authorises (I do not hear yet about the irreparable injury: "very great, and perhaps irremediable:" I believe, on my soul almost, that our court thinks, that when they are a court of equity, they are no longer obliged to find out what privileges statutes give, interpreted by the precedents and principles of common law: and that when "a bond is filed" to the "probable" value of a subject's house, no court of equity has right to think another should not pull it down: not because there are other ways to keep him from doing it; but because as he means to pay for it, it is no longer in the eye of a court of equity: "very great and perhaps irremediable injury"). The result amounts to no more than this, that if you are doing an act which is conformable to the provisions of the act of parliament, the consequences, be they what they may, are produced by the act of parliament, and not by you; but, if I am right in point of law, you would not be at liberty to change these operations, for the purpose of producing the same (!) effect, without the authotity of another (!) act of parliament. (Can any body read this opinion without seeing that this great Chancellor considers himself only at liberty to inquire the right of such a corporation in the owner's land: and that the injury's being reparable by money his court has no concern with: that the simple question his court of equity is to look to, is whether the corporation has any business there at common law? If they have none he must drive them off and keep them off by the full power of his court. "The important conflicting rights, involving questions of doubt and difficulty": are to work against the railway; not the owner. "Any ambiguity (!) of the terms of the contract (the act of incorporation) must operate against (!) the company of adventurers (the corporation) and in favour of the publick (the owners of the land) (!):" says the court of King's Bench: in the case referred to before)." It certainly looks to me, that the sheet-anchor of the party that held up England through her long desperate struggle with revolutionary doctrines in the bloom of their youth, has not only a more democratick, but a more far-sighted and safer notion of what the law should be as well as is, with respect to these things, than our High Court of Chancery. He sees that the lane may have a turning. He seems to be speaking to this very question; and is an overwhelming authority in any court of equity or of common

law; for he was master of all: tick for a statute was not in old Eldon's way. It is not the effusion of a captious jacobin; but the Lord Chancellor of England for nearly thirty years: as good a lawyer as ever lived; master of the principles of modern industry; skilled in the properties of money; and worth one million of pounds sterling that he had made himself: that is speaking here about the rights of these corporations. To be sure: it lies not with a court of equity to go round measuring, when it is not clear, by their own account, that the aggressor has any right there at all, what the precise extent of the injury is the owner is going to receive: and file bonds and court gold that the aggressor pledges to get a court of equity's leave to continue his aggression. But Eldon says still more distinctly in another case, that the nature of these corporations is strictly that of private interests: this one's act of incorporation, by the way, was a publick act. All their courts say, nearly in plain words, that the publick good's creating these corporations, parliament that makes them and the Crown whose assent they must receive, clearly hold the same doctrine, is a fiction of law: for equity has interfered to decree a specifick performance of agreements with individuals or each other, not to oppose their acts of incorporation is parliament. Agreements with a member of parliament are one thing: but this; agreements not to oppose by persons who are interested in such acts (as against their opposition parliament should not, in justice, make them, usually), are equitable agreements, and ought to be enforced: else parliament wilfully destroys an estate, and then leaves its former possessor to be reimbursed by an action at law, like our Lord Chancellor's sage theory, when possibly the aggressor cannot pay for it, and, like enough, the estate destroyed afforded its owner the only means he had in the world to carry on the suit. It shows not corruption of the legislative power; but its own anxiety to do justice to all the subjects of the Crown: That England has found, by boundless experience, that she must hold them, even for their own sake, to be simple private interests, and all their agreements, rights and suits to be the same: this; when it is the condition of their bargain with the owners or each other that they shall get through the House of Commons and the House of Lords: and their acts of incorporation, as private interests, shall receive the assent of the Crown: which, by their law, is assumed to do no wrong: That they shall be coolly enacted. John Bull stands no such gammon about publick good: he knows them of old. That a canal, railway or whatever else of this sort, gets all its right to go any where from the strictest interpretation of the statute: is their common law. Our courts hold; from the silver and gold they put in the clerk's hand: and the bonds they file. I do not gather however that the clerk touched any of the metal; or had it clinked in his ears: but the whole court swears the railway was ready to clink it: Tick again. I go with Tenterden and Eldon for the act; the whole act: and nothing but the act: comma for comma. But; before; how could I forget such authority as theirs? Did not Mr. Justice Marcus Morton and Mr. Justice Samuel Wilde, those great lawyers, thinking as I do, and thoroughly penetrated with the spirit of the com-

mon law of the land of our fathers; the very genius of Westminster Hall seemed to speak (I thought, as I read their opinions, a dream took me: my head was dizzy with the majestick gloom of the immense vault of Westminster Hall and filled with the glories of the Conqueror William and his Norman line; I saw its first walls rise in the meadow, the monument of the Norman and the work of the Saxon, with Emerys or Cumings making Kendricks, Goodwins, Siwards or Elwyns heap up the great stones; the fame of our Edwards and our Henrys rang in my ears; I saw Bolingbroke enthrone himself: again; the gray light of the same old Hall fell on the lofty foreheads and set lips of sixty-six steady, silent men, on scarlet benches, with a Puritan in scarlet, with a mace and sword, and the Martyr in a chair; again; a Feudal vision passed before my eyes, I saw before another king, the gorgeous phantoms of the long rows of his great vassals, from the forth of Scotland to the pale of Ireland, from Normandy and Aquitaine, from Anjou and Touraine: I lifted the curtain and found myself in the awful presence of the crown; supposed to be always present in her court of common law; as Judge Parker says my sovereign, the people of New-Hampshire, is in his railway, when it pulls down my barn: Morton and Wilde gave me the whole dream: I mistook Tresilian, who hung nineteen on the same gallows for rebellion, for Wilde; and Bradshaw, the Puritan in scarlet with the mace and sword, who was goig to cut off a king's head, for Morton: at first); did not these learned men hold: "That the Charles River Bridge had no right to an inch nor a pennyworth of land, water nor toll, to the left nor to the right of just the right length of the best quality of Bangor boards: straight as an arrow from one point to the other; the two termini clearly set forth in the act"? Can any body sustain an opinion in law against the authority of Tenterden and Eldon there? That of Marcus Morton and Samuel Wilde here? The thing is clear.

The most untoward event which could have befallen the embryo system of equity jurisprudence, not yet ready for the light, forming itself in the breast of the court of chancery, New-Hampshire had just established by statute, was to hurry it into premature birth: still more, that the first obligation of this court to determine such momentous questions should have been in respect of this railway. As a matter of course in Portsmouth, a quarrel was got up, with the first project of it some years before, about where it should go: such quarrels have usually a lasting vitality. The first projectors of it, did at last fix it by law to run from a point, supposed to be known, on the Massachusetts frontier, that is in fact, from the same bridge on which the river Merrimack is crossed now, to the Universalist Church in the village of Portsmouth. This course was uncommonly direct: unfortunately, from that reason, it could not get out of the way of a barren tract of gravel, sand, swamp and marsh, two or three miles south of the village, not worth five farthings the acre: belonging to me. This interesting circumstance to the human race, of course, has been always brought forward to account for my saying they were breaking the law: what it had to do with the fact of their breaking the law is the court's concern: not mine. As, when attacked for stand-

ing in people's way who mean to do wrong, to argue the question and prove yourself in the right, is to exaggerate the cause of the quarrel: the outcry may shift for itself. I advocated its going a mile or more still farther East: however. The first outcry, every body knew came from chagrin at my interrupting a certain leaning toward fraudulent surveys; a constitutional tendency to which I have found astonishingly rooted in all these corporations for the publick good: "veteres inimicitiæ incitabant et dolor repulsæ." All this is immaterial: it could not have affected the oracles, delivered by the supernatural wisdom of our Delphoi. The first project, six years ago, was too soon: then came the disastrous days consequent upon President Jackson's leaving his country to her unassisted destinies. Nothing was done after Diocletian left us, or while he was talking of going, but accept the charter: its whole course, fixed, inch for inch, by law: as it always should be. Another railway cut in above: so things stood four years. All at once, what they had said they never would do, which led to building the poor other railway above in the interval, the railway of Massachusetts: finding, I suppose, some stray coins left in their purses, which had escaped the mysterious power of transferring property, with which not even the wand of NewHampshire's GeneralCourt is so highly gifted as that of a Philadelphian publick benefactor, the "odour of whose nationality" impregnates the world with its sweet scent, so creditable to his nation; suddenly made up its mind, not only to attempt the distant banks of the Merrimack; but, all at once, just before the General Court got together, to roll, right off like Pindar's dithyrambicks, their cars through the Bœotian fields of the Piscataqua: and they must make a burst instantly: they had waited two hundred years and now they could not wait five minutes. They were fools enough to suppose they were obliged to use our charter: whereas, if they had only asked our court of equity, it would have told them that any other would have answered just as well: though chartered for another track: they, of course, cared not a copper about the Portsmouth feud: for there was no reason why they should. They got into the hands of the people who had tried to carry the railway out of the way, four years before, for reasons right enough if the railway be a private interest: as I say it is in law: and against whose interference it was purposely fixed by the corporation where it was. At the General Court; rose from the earth and hovered awhile over the quaking senate-house, then dived into the lobby, an endless spectre, commanding the General Court to instantly give it a new charter for a railway wherever it pleased to go. It has always filled me with astonishment that every body does not see more plainly the impossibility of an honest legislature's granting these high powers without letting every body know they are going to, or knowing themselves where they are to be used. Such a caprice of despotism is absolutely unknown in the old world: and every honest politician, democrat or no, must oppose it. The General Court, though disturbed by the avatara of Vishnoo, and against his numerous friends, that is the whole whig part of it, would not listen to his behest: the directors of the corporation, I am told, had refused him authority to make it: they

asked for a map of his projected course: where he wanted his charter? "The irresistible pressure of the publick good, in whose behalf I now appear," returned the spectre, "has kept me from getting surveys taken yet: I do not know where I shall go with a railway: but the present charter crosses a certain creek, my subordinates report impracticable, a rod and a half wide, with a gulph of salt-meadow to it, of ten:" No survey had been taken or was produced: but they were going to take one: tick as before. The creek, which there was no difficulty of crossing of course, the story being merely got up for the purpose, was picked out because they supposed I should be kept from opposing an unstinted, charter, by letters to the General Court warning them, that if they refused such, every body would suppose that it was because they set at naught the publick good to give me the satisfaction of having locomotives run through my field: the creek being in the extreme corner of the tract above-named. I never troubled myself about this: but wanted to get them off the ground, of course. They had permission to alter their course in detail: a change of a few rods, they said, was indispensable: the rest would do well enough: To alter their course to the ending-place in gross, the General Court expressly refused: for they had seen no survey; and let nobody know they were going to: the two termini remained fixed by law as before. This is not disputed: for the most shocking anathemas were launched at the General Court about it: They must all go, they said, and their railway with them forever, to the Universalist Church; the Author of Evil was conjured into and safely corked up by the Portsmouth democrats in an act of the New-Hampshire General Court. They were now incorporated to go from the point on the frontier of the State, rather in fact from the bridge in Newbury, to the Universalist church in the village of Portsmouth: not an inch farther: with reasonable directness, but still nowhere but to this Church as straight as else might be. No matter why: I am not keeper of the General Court's conscience; neither is the Lord Chancellor: he only keeps the sovereign's: and hers has nothing to do with these private acts, as Eldon says, who ought to know, for he kept two of them for a great many years. I in no way blame the railway for wanting to go where best suited the private interests of some people: for I hold, as he does, the whole franchise to be a private interest: I blame them, and he says he would stop them, for not waiting for another charter, which nobody would have opposed, after the survey of their projected course was before the legislative power. There was no hurry, of course, for only the parts of the railway, that were farthest off from the limits of the charter, were done, when the General Court met the next year. It is well enough to say that any new act at all was violently opposed in the General Court by people of their own motion, they can tell whether they did it at mine: and only carried with the engagement, of those that asked for it, that the railway should not be put just in the place where they immediately proceeded to put it. This was the condition, or as Eldon would say bargain, without which they would never have got their franchise: it was known to every body; the lobby was damp from

the tears on its floor: it was as well known to the courts as every body else. This is not material and does not strengthen the obligation of the Lord Chancellor to read the statute that was held up to his eyes: which he determined gave them right to take land against the owner's will, without paying for it, where their creator, the General Court, told them they should not go at all, in one part of his book: and in another, that it was a question of such "doubt and difficulty," that he could not tell whether it did or no: and therefore, he says, it did. No General Court could, without disgrace, have given the charter they asked for: which was to have no stint whatever. I gravely recommend, however, our High Court of Chancery to resume, to find out what sort of a thing a statute is, their investigation of the great case of Fletcher versus Peck: as it bears on such momentous and complicated questions. This corporation's franchise was the State's alone to give: why she gave it is no concern of our court of equity: whether she gave it and what she has to give and what she gave: is what that is to look to. In a court of equity, says Mr. Ballow: "Let a man be wise, therefore, or unwise, if he be legally compos mentis, he is a disposer of his property, and his will stands instead of a reason." New-Hampshire is not the ward of her own court of chancery: and says our own Papinian: "It is the duty of every court of equity to consult the intention of the legislature, and in the discharge of this duty, a court of equity is not invested with a larger or a more liberal direction than a court of law." These are, I believe, his words.

It is not disputed that the General Court refused them a charter to go where they went. No matter why: that is the State's business: she knows the public good. Under the power given to deviate from the course, originally fixed by law from one terminus to the other, intended merely to enable them to avoid the trifling obstructions found to its exact execution, they gravely were counselled to go where they wanted, from the first, to get a charter; but could not: told that nobody would molest them; knowing that they were better able to carry on a war of law than any that was like to take account of their breaking a law: deliberately building their railway without any act of incorporation where they were building it: beginning at the farthest point (and the most expensive place of purpose) from the track fixed by law, and hurrying it with,there, the utmost speed: to accumulate the largest stores of ammunition, by getting the most money expended, with which to batter the next year the compassion of the General Court into a charter for a railway where it stood built without already. This explains the court's long story about filing the bonds and the silver and gold. The real owners of the corporation, like enough, knew nothing of the risk they were running: others were told of it: for had a real wish subsisted to rob the innocent stockholders; their charter might have been repealed: or rather the subsequent one denied. These said they were running no risk: the General Court could not have the face to refuse: if they did; they would take to our courts of law and equity. The attempting to jockey such a sworn visitor and lynx-eyed overseer of private corporations as our Gen-

eral Court. was not such a burlesque as completely succeeding. Well: I would say nothing about this railway itself: but they involved so many questions of our law and the system of equity we are making by precedent: and our court of it. in their behalf, in rushing to their assistance knock down so much more law and equity both, than there was any call to help them out; butting at law, that never stood in their way: playing the bull in the china-shop, in this sense to be sure; for the true excuse for refusing a special injunction forthwith, was that the adjuncts of the fact did not reach to a court of chancery's instantly interfering, and that the purpose, in which the publick took an interest, of getting the law out of them, could not be gratified precipitately in an oblique way; but had better be done by a Trial at common law: having, I say, overlooked a rational defence, to go out of their way, to promulgate what is neither law, equity nor common sense: that some of the farce at the end may as well come in. Soon after the General Court got up and went home, I was told by a gentleman living two or three miles off, that he and his people were confounded, when they got up at the first streak of light of a mid-summer morning, so that they gathered and stood still in the doorway, with an inexplicable, low, confused murmur, but of very shrill notes, never heard there before, which seemed to come from under the vapour, common here at that season, resting on a meadow before his door. After this vapour rose from the earth an hour or two after, it left behind it, filling his field, to the amazement of himself and the rest, staggering at such an unexpected vision; an unknown horde, composed of men, women and children, red, white and gray: from whence they came he knew not: how nor when: except that none such was there the evening before. The horde seemed to be perpetually talking among themselves, but a language unknown to him: what they wanted, of course, he could not find out: but there they were, encamped and hutted, in one night, in great force on his ground: and as far as he could judge from their proceedings, having no means of communicating by words, they were going to blow up a rock, about forty rods through, on which stood his house: and his house with it. I could not tell him what it meant. It could not be the railway's Irish: that ran through another part of the country. I found however it was the Eastern railway corporation travelling on their way to the Church, which is in the Southern part of the village, by the way of Portsmouth bridge which is some way up the river, above the extreme North of it: this bridge they swore they meant to seize as private property (they being the true agents or assignees of the State's power, not the other highway: our courts see the distinction of course): into the State of Maine. After they had ridden into the State of Maine atop of this bridge (they had as good right to it, they said, as any thing they had took already: and so they had); they were going to ride atop of it back into New-Hampshire again: and if any body wanted them to, through the whole length of the streets of Portsmouth, to the church at the other end: the terminus fixed by law: having gone out of the way, then, several miles out of some fifteen of level country, or thereabout, to the

Church. This last is not material: they did now put it on the ground of indelicacy of accomplishing what the act told them to: of which they had no survey. It was intimated (This is the substance of the argument: I am not attacking the corporation or their agents; I only wish to have, what our court of equity thinks law, well understood, that they may not be troubled again by people's interfering with their corporations): "Your act of incorporation does not tell you to go to the Church by the way of Winnipisauky and back." "Damn the act: you put that in, some of you: we will go where we please." "But," it was said: "Any body can take advantage of you, you cannot obstruct the highways of the State: you will be at every body's mercy wherever you go." "Damn the State: we will make the General Court give us another act to build it there, then, after it is built; they cannot refuse it after we have spent four hundred thousand dollars on it; owe for the damages; and have been carrying passengers over it six months: why, our creditors that lent us the money to build it with, and the owners of the railway, that do not know they are in danger, would keep on that: the publick will be impatient to use the railway: it would be an outrage to them and inhuman to all to refuse a charter to a railway that is built: if we wait till we get the charter, you will give us the same cursed trouble you did before: the only way to be sure of a charter where you want it, is to build your railway there first: we have the ablest counsel (so they had): the courts are with us (so they were too): if one of these farmers you are setting on us, be fool enough to try it, we will shew him what it is to take hold of a corporation, pledged to effect schemes to near five millions of dollars already, in a suit at law: we will bring an action against him for the loss of time on the whole railway: we can ruin every one of them without minding it: he cannot last out a lawsuit with us: if he stop us now by a proceeding in equity; we will get a decree in chancery next year against him (this law, one would suppose, must have come from nobody but the court itself; this and "trespassers ab initio" are twins); and make him pay us for keeping us from carrying passengers, the nine months here, before we get our charter." Such luminous views of the law of the land, and so sound, were taken no peremptory exception to: the gentleman above-named asked the Chief Justice to stop them: till the thing could be argued he instantly did. His house was a right angle to the Church: the farthest and most expensive part of the whole track, picked out of purpose to attack the General Court's humanity next year. They were not then sure of the law: they would have rather paid him, twice over, for his three hundred acres, than be stopped there: and every body else they feared would take the field: they called from every quarter whatever could bend or frighten him. Amazed at having touched off such a magazine; frightened at his own success; and hardly believing his eyes, as the old horses stood still, wondering where was the scourge, and the accustomed shouts of their friends from Tipperary and Roscommon, who stood around resting on their spades, as soon as the mysterious talisman of the Chief Justice took effect; and softened by such hard-wrung tears in eyes he never saw wet before: his compassion sur-

rendered after a parley of forty-eight hours. Mephistopheles, they said, was now down in his turn. Others however took the field. "Do you gravely hold," said he, "that this act means you to wander about where you please, and, after you have been in another State, to come back to the ending-place fixed by law. One charter, then, will do for all the railways ever to be. What is to keep the other railways from running over your track?" "we do not mean to go to the Church at all: we are not obliged to go there." "Well: but is it not in the act?" "It is not in the act: you made the General Court put it in." As to his making the General Court put any thing into an act; it can answer for itself: if the court thought he did; they should have asked him what it meant: not taken, his making the General Court put any thing into an act, for proof that it was not in it. Somebody else asked an associate justice to stop them: the precedent was to settle the law, it seems, for our court instantly took occasion to tell us what it is, as we have seen: Every body hung on the words, wisdom herself was going to speak: He, of course, exhausted his great powers on the problem: notwithstanding the advantage he possessed of being president or director of a railway himself, they failed to solve it: it was solved by the "High Court of Chancery of the realm, immediately representing the Crown; guardian of her majesty's infants, idiots and lunaticks; one of her privy counsellors; speaker of her House of Lords; Keeper of her conscience and her Great Seals." That determined that the law was clear against the petitioner; but so doubtful that the court could not find out what it was: both. Happening to be taken by the railway, I suppose, at the flood; as the other took them at the ebb: one of them did act: I believe. One of the farmers who had implored them to help him, put his own cattle into his field against his door: This was the very place where the railway were going to pass with all their gravel for the great marshes: a key of their whole position: What followed? Why, there started from the earth five hundred gentlemen from County Galway and from County Mayo, from County Kilkenny and from County Kerry, from the bog of Allan and the isles of Arran, with spades, picks, crows and shovels in their good right hands; shouting in Irish; like their Gaulish brethen at the Roman legions; "truci cantu clamoribusque variis horrendo cuncta compleverant sono"; headed, in person, by the magistrates of the county, the railway's counsel learned in the law, the president of the Piscataqua bank and the collector of the customs for the United States: and, like the bones of the valley before Ezekiel: "The breath came into them, they lived and stood up upon their feet, an exceeding great army." What became of the prophet, after he summoned such a host, I do not know. Another freeholder armed his friends and himself, and revived the good old Norman fashion of trying a writ of right by wager of Battel: What did the railway do? Why they paid him: at the rate of two thousand dollars the acre for a heap of gravel, with no other building near but the one he was in; and that he moved there apurpose. The committee at last reported: generally about five hundred dollars the acre; the railway paying more money to get through the sands and swamps

of Old Hampton than it cost to build the road on the same ground: they, and the courts with them, making a farce of the law; unsettling the tenures of property by the doctrines they put forth more than by any occurrence since the American war; forcing a sentiment of hatred to such corporations upon respectable people by their unutterable folly, that has affected the safety of corporate property in New-Hampshire for fifty years: aggravating their own ultimate expenses between the North banks of the rivers Merrimack and Piscataqua, in consequence, to a serious extent: making a political thing of it, of their own accord, and giving the opposite party five hundred majority in a district doubtful before, and turning one town to the other side that had been on their own from before the memory of man: at last, winding up with a quarrel with those that led them on, and swearing they were jockeyed themselves. I must pick some flowers off its banks: I will get again into the great river of the law: which I expected to find so broad and full: but where our courts found so many sands and rocks; the stream so narrow and crooked: and the water so low.

On the whole it seems to me clear: That this railway had no right to take land or any thing else against the will of its owner till the damages were assessed by a Jury and were paid; let the statute have been what it may: nor can the General Court ever give such a right, except it absolute assure the owner by statute, that the State contracts with him herself to pay such: That they had no right to do it, by the statute itself interpreted to a lawful statute: and then, not till they were assessed in the way clearly set forth in the act: And that in thus wilfully deviating from the course prescribed by the State, and breaking or eluding the State's own agreement, or as the Englishmen have it, contract, with all persons whatever to be affected by their proceedings, expressed in their act of incorporation: They were not only in the act of setting up a nuisance,both publick and private; but engaged in a breach of the law (however ludicrous in story), which suffered as a precedent,overthrows every tenure of property, more especially their own, known to the law: And; that, though they were liable to be stopped in various ways, the most direct way to do it, and thoroughly consistent with the customs of such a court, was by an injunction from a court of chancery: That, as the owner's right was undisputed, except so far as it conflicted with this new right resting upon a statute; if there were any doubts as to the completeness of the last right; the owner's right was still complete in law: and; That, till that question was set at rest by the Lord Chancellor himself, the last should have issued his injunction in his favour; or to the next hearing after its being set at rest by a court of common law. The not issuing it, however, might have been defended in some degree: but the court has volunteered what is no defence; and troubled itself to tell the world the law without being asked to: in doing which they usher such doctrines into the world about these private corporations and the right of the General Court to give them unlimited powers; that to overlook such constitutional law and interpretation of statutes is wrong. Let us see, however, if the court had the power.

I do not profess much acquaintance with the history of courts of equity in the States: I believe that they have generally followed the steady stream of registered English precedent, arrogating a little more width of discretion than would be willingly tolerated there, though this is not so taken hold of by the publick, from the contractedness of their spheres: and that, in them on the whole, the law of equity has been admirably administered. What the jurisdiction of the others may be though is not material: for, as I read it, New-Hampshire has magnanimously bestowed on hers, pretty much, the full assemblage of authority, which is found in the Lord Chancellor of England. Whoever drafted the statute has been careful to put, safe just in the middle of an array, behind and before, of single and distinctly described employments of this great authority, filling a page, four little general words, which might have been in more danger at the outposts of the grand army: among the far-stretching files of his bayonets, we can still get sight of the little cocked hat of the Emperour in the midst of his soldiers: he has also been careful to register for him the full use of the writ of injunction. What she gave all this for I do not know: his pure equity power can do no good to a people so shrewd and watchful, so free to cavil and so hard to bind. But some of the powers of his court are, in the business of life, as well as a court of law, not to be done without; not only to help out what the common law, or some law, ought to do, but which it does not originally mean nor profess to do; but to help out its doing what it does mean to do where it belongs: for, had no Lord Chancellor ever subsisted, they must have been found in the hands of a court of common law. Be that as it may: these powers are here in the hands of our court of equity: and in this stage of its growth equity must give, on every question it is called on to determine, a complete investigation of our common law; our statute law; and a laborious examination of what each question is in itself: for not doing, where a court is concerned, is pretty much the same thing as doing: in law. In such cases as this: it can lean little for assistance on English precedent; for an English statute and one of ours are so opposite in nature, that it is folly to attempt it. But its precedents, it registers at this period, are of serious import: for it is itself that is, through them, to let us know the orbit of a power, which, through a vast range of human rights, though it look so quiet, is to be beyond control. It must fix irrevocably where its tremendous wheel is going to revolve. It must let us know where to stand to get out of its way. No awkward nor unsteady hand must have hold of it till this be done. Where a Chancellor is to strike or spare we have a right to be told. He is not to let us pass the same spot in the forest, safely fifty times a day, where he lies hid; to find ourselves there, all at once, with our bones cracking in the folds of the anaconda, that has been watching in the trees the whole while. He must give us something to guess by, what he is to do: and this must be precedents he means to keep; as much as a court of common law: more; for its expansive drift is the essence of his court: and from it there is no appeal. I concede that there is often just cause for doubts what he shall do: contrary to the usual course, I wrote this letter myself first and

looked into the books afterward; about his equity obligations: but had to make up my mind to let the first draft stay as it was: satisfied that there was no shadow of doubt that the law was what I at first supposed it: that the only question was, whether the Chancellor should stop them, or tell the man to do it himself. In this part of a Chancellor's jurisdiction, he will find it hard to keep off complete decisions, and refuse redress from the confused doubts of his own mind: for what, mostly, he has any right to give license to, he may be called upon to see that it is not resisted: what he has no right to prevent, we can make him enforce. Interpretation of statutes he must make on the strictest precedents and principles of the common law. He is always dealing with artificial rights established already with accurate and unchangeable exactness by statutes or the common law. Can our Lord Chancellor refuse to prevent, what is an injury by statutes or the common law, but cognizable by a court of equity, because there is no sufficient power to do it elsewhere, or simply from custom, for it is not true that a sufferer can never show his face in a court of equity, that has any remedy at common law, not even if he have a complete one; till he have time given him to find out, long after the injury is irrevocable, whether it would not bring too many such people into his court, to prevent it? Unquestionably he cannot. His high power, through his writ of injunction, fills a chasm which would have been filled in England, long before now, by statute, had no court of chancery subsisted: and here it is wanted, from various reasons, ten times as much as there: it is not in his hands, there, because he is a court of equity: but simply, as every body knows, because from accidental historick circumstances it is found in a Chancellor's hands and has been suffered to abide there: others have agreed to go without it, because he keeps it for them: it is not essentially an equity power; it rests on completely different and opposite principles. Or, at another time: somebody asks the Chancellor to make somebody tell, what he has a right to have found out, but nobody, owing to ineradicable, arbitrary law, can make him but the Chancellor: though the fulfilment of his prayer is contrary to every custom of the common law; is he to grant it, or refuse to grant it, on principles which in nature distinguish his court from a court of common law? He may have wider discretion than before; or he may not: but he should have little in either: for his granting can seldom do much harm: his refusing may a great deal. Circumstances again have kept for him a power which nobody else has: but which other people would have had; and they must have it, if he be to use it as a moral tool, in place of a customary link in the business of the law. When this purpose is effected: The same asks him to decide a vital question, and enforces his request through what has been discovered by this process. Now: though still governed by a set, not only of abstract, but of most arbitrary rules, or professing to be, for they have repeatedly changed, but usually in England, it must be acknowledged, for the better, he is more in a real court of equity: now he often must take a responsibility; before, very little: now he has some width of discretion to compare, balance, raise disqui-

sitions, make farther inquiries: and deny. And in issuing a perpetual injunction, he is in some sort in this court of equity: surely not much in issuing one till the hearing. Or at this time: Somebody wants him to prevent what must or may be some irreparable injury or other: we have seen that Lord Eldon, in the case of deviation, will not trouble himself about what it may be: the necessity of showing real irreparable damage, may make treaties more compact, but it is not borne out by decisions; and it would be absurd if it were: in one large class, a Chancellor requires no proof of more than nominal: He asks the Chancellor to prevent what will be an injury, if his right, never impaired nor questioned before, be still good and be to continue good; till it be proved that it will not: and it has not been proved before the Chancellor that it will not. Is he to want time always to hesitate and fluctuate? To determine, like our court, that his right is impaired without hearing or Trial; the very thing he denies: that he does not deserve protection, because it would be useless to give it; for he thinks from his own private knowledge, that the law will take from him, some time or other, when is uncertain, the right he, the Lord Chancellor, knows he has now? Unquestionably, he is assuming a power of a very dangerous nature: it must end, here or any where else, in breaking up his court. His refusing is near about the same effort of power as giving. He must put an end to all farther prosecution of the injury till the right be determined by himself or by a court or jury at common law. The writ of injunction the owner had a right to look for: though English precedents are few that meet his case. Of course they are few: this gives more, not less, obligation to the court to determine it: a wilful deviation from the course prescribed in the act few such corporations would, there, dare to attempt: we have seen what they say when they do (this question would have been best debated on a bill from the dissatisfied members of the corporation; which on investigation must have been sustained by the court; for they could not help it): And, as to the lawfulness of the statute itself or the doubts as to its interpretation, such things in England have little place: the first none; and their acts are so well drafted now, that he can seldom doubt their meaning: if he do; he has the court of Queen's Bench to assist him, and the decision of the Lords on the law. I do not profess to comprehend, how a Chancellor can help, here, the original estate and some damage being both conceded (except he tell a long story about filing, to be sure, bonds in his court and the silver and gold, which no statute tells anything about this corporation's doing, and every body else would have as good a right to, that wanted to make people sell); how he can help bringing the full examination of the statute, and its bearings upon the law, and upon the business in hand, in every way, into his court; without he get it tried elsewhere if he please: that he can do here: The owner's right is completely good till this be done. If the Chancellor's mind be not satisfied that what is doing agrees with the statute, and the statute with the law: who so fit to keep off aggression till it be: as himself? Is our court, after getting up their court of equity themselves, to establish the doctrine that when

"a company of adventurers," so says the Chief Justice of the court of King's Bench, is about to drive a person off his land, if the owner's right be good in law and theirs be not; or it be doubtful whether theirs be or not; or whether they will be bankrupt or no before they pay for it; of which the law can know nothing; for it cannot tell how much they will have to pay till the Jury tell; and the State say she shall not pay for it: and so on to the end of the chapter: that he has no business to show his face in a court of equity? I am only playing with the fish in doubting whether the force of a statute can he discovered, usually, in this way as soon as another: reason teaches us that such a right as to build a railway over grounds, under houses, churches and churchyards,across roads and great rivers, against all opposition, or to stop a railway earning several hundred thousand dollars a year, is not to be left floating about; we must have a precedent to tell us what it is: and it must be enforced one way or the other. If our Lord Chancellor be not under obligation to protect the man that resists, he will be asked to put down, perhaps, his resistance: and after being chased round the tree to get off from doing this very thing, he must at last get collared, and resolutely and absolutely determine what the rights are which rest on nothing but the statute: he did not, here, get off, as he tried to, from saying whether the railway's right was indisputable: he did, for all practical purposes, decide that it was: had they turned round and asked for an injunction to keep one of the same owners from building a house where they chose to select their ground, he must have issued it till farther hearing: or told them to drive the others off. And as I understand the drift of the whole: nobody can in any way obstruct the proceedings of these peculiar corporations without incurring the risk of paying for their whole loss of time on the whole road. Consequently, nobody will ever attempt it: and, with any sort of excuse for a charter, their power, in practice, is neither more nor less than absolutely superiour to all opposition, remonstrance or justice whatever.

As to these writs of injunction again: I will not say equity is installed as chancellor, to keep as a mother all her children from hurting each other at all: nor will I look up English authorities to show what they are. Sir Edward Coke, the first gun usually fired as a signal of battle, nor Ellesmere with him, will I summon up to see another row with a Chancellor or hear him instructed: Coke and Egerton, their quarrels over, may rest in peace for me. Neither will I mount our own Papinian, who stands ready bridled and saddled to my hand: he would carry me like oil over this ground. Fair colours and bounteously bestowed he puts on: the old lady looks well in her rouge. I will not be too munificent in my dispensations of equity to a court of chancery. A tribunal to busy itself about the fraud, accident and mistake of human contracts, is not imperatively required by the habitual faults of every family of men. But the power of, to some extent, making hopeless the attempt of the strong to terrify the weak, is not to be lightly relinquished. This most admirable prerogative of a court of chancery is, in nature, to some extent, completely separable from one: and might, so far, be given to a

court of common law. The writ we do want: the court of equity is more doubtful. It must bring itself in from sheer necessity. Our wise Lord Chancellor says: If "the respective rights of the parties admit of doubt"; no injunction shall issue: he wilfully mystifies what is as plain as day. The term "doubt" has no business here, with respect to either party. He has before him a subject of the State, whose right is not disputed and is still complete against all the world but a single aggressor: the aggression is not disputed and is supported by a simple statute. There can be no such thing as a "doubt" about either's right. He is to look to nothing but what the new right is; not on any equitable dreams: but at common law. If it be not clear; there is no "doubt" as to the other. Whether he choose to defend this is another question: but he is imperatively forced by law to hold it good till the other be good in law. If no rights be clearly subsisting at common law from a statute, none subsist here in a court of equity: he has nothing to do with them. If he be bewildered by the doubtful right of the railway or anybody else, the owner is not to suffer for that: he must issue his injunction till his self-possession come back: or tell him he need not come to him; but drive them off himself: if the railway's right was not so clear that they could lawfully drive him off yet; he could them. And where so good a place to find the law, as the Lord Chancellor and Chief Justice of the State, in whose breast it all lies so safe? This shows, what I might have said before, that this "bond" he was so entranced by, and the silver and gold which revealed to the maiden palm of his poor clerk such hitherto unknown celestial thrills, could not have been meant for a chancery suit: for no man of common sense, would come back into his court of equity to hear it discussed whether he ought to have been kicked out the year before: till, if he wanted to go farther, he had gone into a court of common law, of himself, and got his right tried: Then he might come back and demand an injunction for good. The writ of injunction does not derive its value here from its issuing from a court of chancery. It is the most complete substitute for actual force: every body that helps to support a government has a right to demand of that government, without using force himself, or incurring the risk of ruin, defence at his own pleasure, instant, complete, exact and full, for all, for every right, every contract, every lawful fancy that fills his head: it must give it or it is no longer a government. The Lord Chancellor of England issues his injunction to restrain from cutting down ornamental trees, or ploughing up a strawberry bed, as readily as to restrain from tearing down a palace. No law deliberately can mean to let a subject be driven to use force himself, or run the risk of ruin, to defend his rights; when it knows they are attacked (it is not to be expected, to be sure, that the owner should be punished ever for resisting a pretension, to which a Lord Chancellor finds so much "doubt and difficulty," that he cannot tell what the law is); but the government itself, if his right be now doubtful in this way only, must sustain it till his loss of it be proved. These private acts of the General Court are not to oust a subject, when a Lord Chancellor and three Masters of the Rolls, a Chief

Justice and three puisne Justices, all together, cannot find out whether they have any force and cannot tell him what they mean ; till somebody can. The railway's Irish are not the depositaries of our law to determine the question. It is very clear that a court, that says that the aggressor's right is "doubtful," could not hold anybody in the wrong for resisting it, when his own right was agreed to be not "doubtful," against the whole world except this single aggressor. The mid-day folly of any other doctrines comes home, of itself, to every man of truth and sense, throughout the world. Hear the fourteenth article of the bill of rights: "Every subject of this State is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property or character ; without being obliged to purchase it ; completely and without delay : et cetera :" The General Court never did mean to keep writs of injunction from being given in doubtful cases : the right to be determined afterwards : see the statute : "Said superiour court may grant writs of injunction whenever the same shall be necessary to prevent injury :" The chancery power of injunction is completely given, as distinct from the other powers : "may" in such places means "must :" and each separate Justice is given power to issue one in vacation till the next term of his court : by the express words of the statute : in England the Lord Chancellor or Master of the Rolls can exercise his full powers wherever he is : ours cannot ; but this power is purposely given each here by statute. The issuing one till the next term of a court has nothing mysterious or frightful about it : This writ is to shackle these corporations ; and keep them from being too breachy : they have been found in other people's pastures rather too often, and have got the name of it too well established ; for their master, the State, not to get some shackles ready. On the other side of the water, where, in the landholders they get hold of people that can last out law-suits as well as they can ; it is not so much wanted : the only reason it has not been much used.

I am disposed to believe, in fact I am told, that I rate too low the enterprise and professional skill with which our court of chancery has been round and sounded all the bays and inlets of the coast of their power. The pleasure of a straight coast, somebody says, is purely imaginary : the more broken and irregular, the more good harbors for traffick : and, he might say, the easier to defend against an enemy that does not know the way in. The extent of their power has disincumbered itself of doubt, I believe, with respect to these very questions : Is it true, among other ludicrous circumstances, that a person who told one of the farmers they had no right to his land yet, was tracked after, as this corporation's people supposed without his knowledge, for proof to bring against him, and in one unknown, under the circumstances, to the English common law, for a hundred years, an action for stirring up suits, before a court, that tells us that the State means to give us for "just compensation," "the ordinary common law remedy against trespassers (!) ab initio against all (!) concerned in the acts done upon the land" ? Are we going to

fetch her into court too for stirring up suits? How many is it, she means to stir up? And the best of it is: that he puts the State into a more ridiculous posture than is necessary, for his own theory: for the owner might come into his own court of equity for an injunction and an account; which would look better: though what good either way would do, I do not know. Is it true, is it not notorious, that the railway never affected to defend their proceedings in any way but by purposely taking advantage of his happening to have some worthless ground, straight between two ending-places fixed by law, to swear that all fault found by every body for twenty miles round was got up by him; and (flebile ludibrium!) that they meant to break their statute of purpose, and carry a whole High Court of Chancery out of their way with them on such an errand, just hard at work building up by precedent the great dome of equitable jurisprudence, that is to fill the air over the heads of our children, to harrass him? But though we can laugh at the tricks of a corporation, my learned friend, will it just do to let off our Lord High Chancellors with a jest? I have some misgiving. Well: suppose the same railway had gone round and taken the village of Concord under this act: would the court have still assumed a sweeping statute? How could they have helped it, except they held the statute up to their eyes and read what was in it; and found out whether the railway was where it belonged? Must the owner's counsel, or the owner himself, come to show them how to read it? Or when a subject's house is pulling down in January: and he asks the Chancellor to help him: shall the last answer that he must let it be pulled down now?: for the stranger, that is at work at it, is ready to made oath that he got in and out of his scullery one day, without his wife's emptying the kettle over his head; which is constructive assent on his, the owner's, part that the other has got a copy of a private act of the New-Hampshire General Court in his breeches-pocket, which he, the Chancellor, has not yet seen and does not know what there is in it; but learns from the stranger that he is ready to make oath, that, as he reads it, it tells him take right hold: and that, consequently, if he obstruct the stranger's operations, he must send him to jail: but that, if he insist upon it, he will make the stranger let him see this act he has in his breeches-pocket next June: when he, and three other Lord Chancellors will, upon "full hearing and investigation," which, if he will come up somewhere a hundred miles off, he may have the pleasure of witnessing himself, determine whether, under this statute, he was lawfully, with his wife and children, kicked out of doors the January before? The court should have stopped them till they got their charter: they should have stopped them till the damages were assessed through a Trial by Jury; and were paid; go where they would; under the acts on which rests this corporation's franchise. If the acts neglected it; it was time to tell the General Court to neglect it no longer. It is notorious that the State does not assume these debts for her own: there is the bill of rights; and it has not been altered. However the court stanchly defends itself by saying there was no hurry: there was to be "full hearing and investigation" the next summer: tick once more;

it is all tick. Telling the sufferer, that the right of the aggressors to kick him out, shall be subject to "full hearing and investigation" the next year; but that in the mean time he shall go to jail if he says a word: is a fit companion for the "tick for a statute." When this injunction was prayed for, or rather the injunctions, for the court tells us they were innumerable, and all of them considered as one; this corporation's franchise gave it no right to put a railway in them, or on them, or under them, or over them; their lands against their will.

People in the profession should take up the cudgels, my learned friend, not I: it was not from want of having heard that it is a bad thing to be caught in a row without wanting to put down completely either party engaged in it (I am no enemy to these corporations if their powers be kept within the limits of what they are in law), that I censured the proceedings of this corporation: which, in themselves, are of little moment: but such doctrines as our courts hold in respect of them are enough to wake anybody up: lawyer or anything else. They are, in law, incapable of defence: they are at war with every principle of justice: they are ruinous in policy to the people that praise them: and they set up, the worst of all governments, an irresponsible, meddling legislative power: led, one day, by the craft of the cunning or the rich; to be the tool, to-morrow, of the retaliation of the cheated and the envy of the poor. These corporations, of every sort, have a strange notion of their own interests, if they think they shall gain by letting any be looked on, in law, as this sort every where wants to be looked on. The confusion of their own franchises would put it in the hands of each State's legislature to make it impossible to find out, who owned any thing: or for any body to recover any thing for what he is stripped of. A very limited purse, scientifically spent in this very State in the county of Strafford, would make useless, half the year, every mill on the river Merrimack, from its source to the sea; and laugh at the dream of a dozen future cities: with a franchise, interpreted by this opinion of our worthy Lord Chancellor, a single person, by getting a certain charter, without notice to the world, without being tied to some strict interpretation of his act, could extort millions: they could not prevent him; the courts could not take back their law; nor the General Court its grant. Are the men, ready to do such things, so scarce in New-England, that their ingenuity wants to be stimulated by the offer of spoil? The hoards of the rich and the earnings of thousands of the poor, will rest on a statute. What is a statute worth with a careless, vascillating legislative and judicial power? Nothing. The court of the United States is not to always interfere to save: they are tired already. The system of innumerable private corporations for purposes of a public nature, I have not to consider. That it could be well dispensed with I do not know: that it is not like to be I do. These United States have told the world, to be sure, they were going to solve the problem, so many have tried to and nobody has, to keep each of us equal in political power to the other: but they have not gone so far as to mean that each of us should build his canals and railways for himself: and everybody knows we are not the people to sit still and agree not to

be envied: that every such thing we shall attempt, that can be devised; and that skill,industry and money can bring to pass,we shall execute. The usually predominant party of the United States says that their general government should not attempt them; and most justly: they say their State-governments should not; perhaps with truth: Then this growing empire is to be arched over by the works of these corporations. If they be to have a hand in building the publick works of the United States; if they be to do all that single persons cannot; or a tenth of it: the law of their tenures will be a serious matter. Are they to do what this country calls for: and keep pace with the wealth there is like to be in it? Wealth is it? Why, some time or other, this is to be Mammon's chosen field. The temptation and the ready to be tempted are both here: such real natural wealth as these United States contain is not elsewhere known; so much of all: and whom is this temptation set before? A people restless, ingenious; but as lasting and sure as they are daring and vain: fifty millions of them, in fifty years, must inhabit but not fill these States: their genius is of the first order; their resources are absolutely boundless: they are thrown at the feet of European civilization in its palmiest day; with Europe's own progress and every convulsion to help: To canal it and railway it and bridge and dam it; is the catechism of this magnificent region, where a new faith, more intolerant than Mohammed's, that of Utilitarianism, is to triumph undisturbed. There is the field God has thrown open to work in: its vastness and richness reach to the awful: and it will be worked with the undying efforts of that passion for adventure and thirst of gain which nothing but death ever yet quenched in a Yankee's heart: which laughs at labours and dangers, at delays and reverses, with a sublime heathen heroism worthy of a better object. If these private corporations be to do a tenth, and they are like to do in the end almost all, that we mean to do, besides ploughing the ground: the wealth of thousauds upon thousands will rest on a statute. Their franchises will overtop the interests of single persons; but they will not each others': neither is to set up too high the way to keep still the rage to pull down. They will be always making and unmaking in legislatures and contesting in courts. They are deeply concerned that the power, that creates and destroys them,should not be careless: that the rights, it alone can give, should rest on respected laws: and to bind it in the chains of habit: "Komm, lies es selbst in dem Planetenstand" "Dass Ungluck dir von falschen Freunden droht."

They will gain nothing by confusing people's ideas about publick and private property: the publick may get to think, at last, they may do as they please, with what they are half-told is their own. The other doctrine is the true one: the simplest and least complicated in law: the straightest in practice: the justest to others and the safest to themselves. They are thorougly private interests: the public good's creating them England looks on as one of her fictions of law: like the debt to her king in his court of Exchequer; now, I believe, exploded by statute: It is best, for themselves as every body else, that they should be looked on as such

by the legislative and judicial power. There they are incorporated to take land against the owner's will as much as here: they are not incorporated, without every body's being heard that wants to be, or against determined opposition. The shifting estates without any notice at all; the giving them a whole country to pick at pleasure, after they are chartered instead of before; is pure violence. When a charter is asked for: let the right of survey be given; to be used without insult, and the damages of it, if any, be assured by the State: let there be notice given to each town: let there be, the next session after all this, a clear and precise map of their projected course, laid before the legislative power: let all people, where it is to be, be fairly heard; they surely should be: let the Trial by Jury be prescribed in the act; how and when: it must be: and the damages be paid first or they must be assumed by the State for her own: Then, if the owners will hold out, the State will use its high prerogative as it thinks best. With such accordance to the law of the land, and our principles of government; which it lies not with the General Court, or other courts, or railway-companys to alter: few will obstruct their well-meant schemes, and few, except among their own tribe, will envy the deserved success of every one of them.

I have the honour
To remain,
My learned friend,
Your obedient servant,
A FARMER.

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